

HI-TECH EMERGENCY VEHICLE SERVICE, INC. FIRE APPARATUS CONTRACT

THIS AGREEMENT is made between HI-TECH EMERGENCY VEHICLE SERVICE INC. a fire apparatus operation, (Company) and the CITY OF CALISTOGA, 1232 WASHINGTON STREET, CALISTOGA, CA 95415. (Buyer) on this 21st day of November 2018 ("Effective Date") relating to the sale and purchase of a fire apparatus and equipment. The Company and the Buyer shall be referred to individually as "party" or collectively as "parties."

1. **ACCEPTANCE:** Company agrees to sell and the Buyer agrees to purchase one (1) Toyne Inc./Spartan Type-1 Stock (#12133) Interface Pumper fire apparatus and equipment (Apparatus) per Hi-Tech Emergency Vehicle proposal letter dated October 17, 2018 ("Proposal"), attached hereto and hereinafter incorporated by reference as Exhibit A.

DELIVERY SCHEDULE: The Apparatus shall be ready for delivery F.O.B. Oakdale, CA. within 30 days after the Effective Date of this Agreement.

2. **PRICE:** Buyer shall pay as purchase price for the Apparatus which is the sum of Four Hundred Eighty-Two Thousand, Four Hundred Three and 22/100 dollars, (\$482,403.22) pursuant to section 3 below.

Said purchase price is as follows:

\$447,706.00	City of Calistoga original subtotal
<u>34,697.22</u>	7.775% CA sales tax
\$482,403.22	Grand total one (1) Toyne/Spartan Type-1 Interface Pumper

All applicable Federal, State or local taxes, fees or tariffs not specifically noted above will be paid by the Buyer directly, or will be added to the purchase price and paid to the Company. If Buyer claims exemption from any tax, Buyer agrees to furnish applicable exemption certificate and to save Company harmless from any such tax, interest or penalty, which may at any time, be assessed against the Company.

3. **TERMS OF PAYMENT:** Terms of payment shall be as follows: Net upon delivery and acceptance of completed Apparatus. Prior to acceptance, Buyer shall inspect the Apparatus to ensure that the Apparatus meets specification #10111-0001 dated 07/20/18, Toyne Type-1 Interface Pumper, #12133 Stock Demo Apparatus, ("Specifications"), which is attached hereto and hereinafter incorporated by reference as Exhibit B, as well as the terms of the Proposal.
 - a. If the Apparatus do not meet the Specifications and the Proposal then the Buyer, in its sole discretion, may reject the Apparatus, shall not pay any amount to Company and this Agreement may be terminated by the Buyer.
 - b. If the Apparatus is accepted, the title and ownership of the Apparatus shall be transferred to the Buyer.
4. **CONTINGENCIES:** Prior to delivery and acceptance of the Apparatus, Company shall have no liability to Buyer for any loss or damage arising directly or indirectly from any delay in delivery due to strikes, inability to obtain materials, fires, accidents, or any other cause beyond the Company's control.

5. **WARRANTY:** Company warrants to replace and install, at their expense, any and all parts of the Apparatus where breakage or defects are found to be due to defective material or poor workmanship and not due to normal minor wear. The guarantee for parts and service shall be a period of two (2) years from the date of acceptance of the Apparatus and this replacement and installation shall be at no cost to the Buyer and shall include any applicable freight and labor **NO EXCEPTIONS**. This Company warranty does not apply to minor wear components such as lights, globes, belts, tires, et cetera.

Individual component warranties other than two (2) years shall be warranted per the individual manufacturer's warranty:

- A. 2-year Spartan Chassis Basic.
- B. 5-year Engine.
- C. 5-year Transmission.
- D. 2-year Toyne Basic.
- E. 10-year Paint.
- F. 10-year Stainless Steel Plumbing.
- G. 20-year Body Structural.

All applicable manufacturer warranties are attached hereto and hereinafter incorporated as Exhibit D.

6. **REPRESENTATIONS:** Company represents and warrants that it has full power, authority and legal right to execute and deliver the Apparatus and to perform its obligations under this Agreement. Company represents and warrants that it is an authorized Toyne vendor and has the authority on behalf of the manufacturers to offer the aforementioned warranties.
7. **ENTIRE AGREEMENT AND AMENDMENTS:** This agreement, including its Exhibits, embodies the entire understanding between the parties relating to the subject matter contained herein and merges all prior discussions and agreements between them. No agent or representative of the Company has authority to make any representations, statements, warranties or agreements not herein expressed and all modifications of this agreement, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.
8. **SEVERABILITY:** If any part herein is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provisions shall be deemed inapplicable and deemed omitted to the extent so as to be contrary, prohibited or invalid, but remainder shall not be invalidated and shall be given effect so far as possible.
9. **TERMINATION:** The Buyer may terminate this Agreement at any time prior to acceptance of the Apparatus.
10. **VENUE AND GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California and any lawsuit filed relating to this Agreement shall be properly venued in Napa County Superior Court

IN WITNESS WHEREOF, Buyer and Company have caused this contract to be executed by their duly authorized representatives this 21ST day of NOVEMBER, 2018.

BUYER'S REGISTERED NAME

BY:  _____

TITLE; Dylan Feik, City Manager

ATTEST:

 _____

Kathy Flamson, City Clerk

APPROVED AS TO FORM:

 _____

Michelle Marchetta Kenyon,

This proposal and contract is not a valid and binding obligation until accepted, dated and approved at HI-TECH EMERGENCY VEHICLE SERVICE, INC.'S principal place of business for Fire Apparatus manufacture.

ACCEPTED AND APPROVED

BY: _____

TITLE: _____

NAME: _____

DATE: _____

IN WITNESS WHEREOF, Buyer and Company have caused this contract to be executed by their duly authorized representatives this _____ day of _____, 2018.

BUYER'S REGISTERED NAME

BY: _____

TITLE; Dylan Feik, City Manager _____

ATTEST

, City Clerk

APPROVED AS TO FORM

Michelle Marchetta Kenyon,

This proposal and contract is not a valid and binding obligation until accepted, dated and approved at HI-TECH EMERGENCY VEHICLE SERVICE, INC.'S principal place of business for Fire Apparatus manufacture.

ACCEPTED AND APPROVED

BY: Brian Ruthman

TITLE: VICE PRESIDENT

NAME: BRIAN RUTHMAN

DATE: 11-29-18

**CALISTOGA RECREATION SERVICES
REIMBURSEMENT AGREEMENT FOR USE OF CALISTOGA
COMMUNITY POOL FACILITIES**

This Reimbursement Agreement, dated December 10, 2018 is between the City of Calistoga ("CITY") and the Calistoga Joint Unified School District ("CJUSD").

RECITALS

- A. CITY is the owner and operator of the swim facilities, Calistoga Community Pool, 1745 Washington St., Calistoga ("Pool").
- B. Pool Facilities are for the use and benefit of the general public, but CITY finds there may be certain days and hours which may be made available for community groups for recreational use in conjunction with CITY's programs.
- C. CJUSD and CITY have an existing Joint Use Agreement which outlines usage of City public facilities. (Attachment 1)
- D. CJUSD' use of Pool outside of the regular pool will benefit the youth and teens of Calistoga by fostering development of swim skills.

CONDITIONS OF USE

The parties agree as follows:

- 1. **Permission** CITY permits the use of Pool by CJUSD as set forth herein.
- 2. **No Conveyance** This Agreement does not constitute the conveyance of any interest in Pool, nor does it create any lease.
- 3. **Term** The permission granted by this agreement is non-exclusive and begins February 4, 2019 and runs through April 19, 2019.
- 4. **Public Schedule** CITY will strive to include additional programs and aquatic activities at the Pool which will not conflict with CJUSD programs, practices, meets, etc.

Season Dates Addendum

4. Definitions

- a. Off-Season – Pre-April 19, 2019
- b. Spring Season – April 19 – May 31, 2019 (estimate)

5. **Practices** CITY and CJUSD shall mutually agree upon practice use time and space;

a. **Off Season** – February 4 – May 31, 2019.

Days	Times	Lane Space
Monday - Friday	3:30-5:30 pm	Whole Exercise Pool
Meet Days (TBD)	3:30-6:30 pm	Whole Exercise Pool
Spring Break – April 1-5	TBD	Whole Exercise Pool

6. **Holidays/Pool Closures** The Calistoga Community Pool will not be available for use on the following dates:

Date	Event	Availability
Mon, May 27, 2019	Memorial Day	No practice time available

7. **Special Events** CITY shall allow CJUSD to conduct special events during the terms of this agreement.

2019 MEETS AND SPECIAL EVENTS SCHEDULE

Date	Event
TBD	Meet schedule will be provided to the CITY as soon as possible.

8. **Food and Beverage** During CJUSD use of Pool for authorized practices and/or special events, the consumption and/or sale of food or beverages must have prior approval from CITY.
9. **Clean-up** CJUSD shall clean up all Pool facilities and/or shall pay any staff or maintenance costs incurred by CITY, associated with cleaning Pool after any scheduled special event at the rate of \$12.00 per hour or at the current hourly rate of pay.
10. **Locker Room and Front Lobby Supervision** During CJUSD' use of Pool, CJUSD shall have on duty at Pool during all swim practices, responsible adults whom shall be responsible for monitoring and supervising both the men's and women's locker rooms, maintaining these areas in a safe, incident/damage free condition.
11. **Pool Covers** CJUSD agree to assist the CITY Lifeguards in covering all of the pools, including

the Recreation pool at the end of any evening activities.

12. **Access to Facilities** The portions of Pool approved for use under this agreement are:
Exercise pool, men's and women's locker rooms and shower facilities, seating area, lawn and authorized storage space.
13. **Coaches** During CJUSD' use of Pool for authorized CJUSD workouts, CJUSD shall have on duty at Pool, and on deck during all swim practices at its own expense, one person, approved by CITY, possessing the following current certifications: Standard First Aid, Community CPR and Safety Training for Swim Coaches or Lifeguard Training. All CJUSD personnel on duty at the facilities are required to possess the above referenced certificates. (Reference Senate Bill No. 865 amending State Health and Safety Code effective January 1, 1992.) Prior to use of any such personnel at Pool, CJUSD shall supply CITY, in writing, with their names, addresses and copies of their certifications. CITY shall have the right to reject any person whom CITY reasonably believes does not possess the necessary skills or qualifications to assure the safe use of Pool. Coaches are expected to cooperate with CITY staff regarding the supervision and appropriate use of the facilities as defined by CITY policies.
14. **Fingerprints** "Pursuant to the provisions of California Education Code § 10911.5, Public Resources Code § 5164, and Penal Code § 11105.3, every coach and volunteer who will have direct contact with minors in a supervisory or disciplinary capacity, shall be fingerprinted before providing any services to the CITY's Recreation Services. Enforcement of this provision is the sole responsibility of the CJUSD."
15. **Lifeguards** CITY shall employ certified lifeguards to monitor and supervise Pool during all normal program hours. During any hours requested, other than normal operating hours, CITY shall employ one (1) lifeguard for every 25 attendees to monitor and supervise Pool at CJUSD expense.
16. **Rules** CJUSD and its members, staff and employees shall enforce and obey all posted Pool safety rules and other rules that pertain to the use of the Pool.
17. **Correction of Deficiencies** CJUSD shall immediately correct any deficiency in the manner in

which it supervises the use of Pool, whether or not such deficiencies are brought to CJUSD' attention by CITY staff.

18. **Safety** CJUSD shall exercise reasonable precautions for the safety of persons participating in or attending programs and activities sponsored by CJUSD at Pool. CJUSD shall prevent access of all persons to the pool, pool area, or any other portion of Pool under its supervision, which are a danger to the health or safety of persons. CJUSD shall immediately report in writing to CITY, any dangerous condition. CJUSD acknowledge that its safe use of Pool during the hours scheduled for CJUSD use shall be its sole responsibility and that its assurances that it will use Pool in a safe and reasonable manner are a critical inducement to CITY entering into this agreement.

19. **Fees** Fees are calculated on a daily basis and an invoice is prepared monthly. The monthly invoice is subject to prorating due to any scheduled pool closures or CJUSD practice cancellations as per agreement. For the use of Pool, CJUSD shall pay to CITY:

a. **Lifeguard Rate**

Exercise Pool only: \$12 per hour (1 lifeguard for every 25 participants)

Lifeguard increase solely at the discretion of the CITY

b. **PGE Estimated Costs**

Costs billed directly as incurred – estimated to be \$488 weekly

c. **Utilities and Regular Facility Maintenance**

Weekly Cost: \$435

d. **Maximum Reimbursement Amount**

The maximum amount of this reimbursement agreement is five thousand, two hundred and thirty six dollars (\$5,236) for the 10-week period starting February 4th through April 19th.

e. **Additional Staff Needs:** CJUSD will pay for any additional staff costs incurred outside of this agreement at the following rate (as of November 21, 2016 and may be subject to change);

Maintenance Staff:	\$12.00 per hour
Lifeguard Staff:	\$12.00 per hour
Front Desk Staff:	\$12.00 per hour

20. **Insurance**

- a. During the entire term of this agreement, CJUSD agree to procure and maintain public liability

insurance at its sole expense to protect against loss from liability incurred in performance of CJUSD' activities and imposed by law for damages on account of bodily injury, including death there from, suffered or alleged to be suffered by any persons whomsoever, resulting directly or indirectly from any act or activity of CJUSD, or any person acting for CJUSD or under its direction or control, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of CJUSD, or any person acting for CJUSD, or under its direction and control. Such public liability and property damage insurance shall also provide for and protect CITY against incurring any legal cost in defending claims for alleged loss and protect CITY against any damages from the alleged loss. Such public liability and property damage insurance shall be maintained in full force and effect throughout the term of this agreement and any extension thereof in the following minimum limits:

- | | | |
|-----|-----------------|--|
| (1) | Bodily Injury | \$1,000,000 each person
\$1,000,000 each occurrence |
| (2) | Property Damage | \$1,000,000 each occurrence
\$1,000,000 aggregate |

CJUSD agree that the provisions of this paragraph as to maintenance of insurance shall not be construed as limited in any way to the extent to which CJUSD may be held responsible for the payment of damages to persons or property resulting from CJUSD' activities or the activities of any person or persons for whom CJUSD is otherwise responsible.

- b. A Certificate of Insurance, or an appropriate binder of insurance coverage evidencing the above insurance coverage with a company acceptable to CITY's Risk Manager shall be submitted to CITY by CJUSD prior to execution of this agreement by CITY. All such insurance shall be primary and name CITY, its officers, agents, employees and representatives as additional insured by endorsement.
- c. The terms of the insurance policy or policies issued to provide the above insurance coverage shall provide that said insurance policy may not be canceled or the terms materially changed therein, without thirty (30) days' prior written notice to CITY for any cause other than nonpayment of premium. In the event of nonpayment of premium, notices shall be given ten (10) days prior to the effective date of cancellation. CJUSD shall, prior to the cancellation date, or within twenty (20) days of notice of material changes in terms of coverage, submit to CITY new evidence of insurance in the amounts heretofore established.

21. **Indemnity/Liability** CJUSD agree to accept all responsibility for loss or damage to any persons or entity, and to defend, indemnify, hold harmless and release the CITY, its officers, and employees, from actions, claims, damages, disabilities, or the cost of litigation that are asserted by any person or entity to the extent rising out of the negligent acts or omissions or willful misconduct in the performance by the CJUSD hereunder, whether or not there is congruent negligence on the part of the CITY, by excluding liability due to the active negligence or willful misconduct of the CITY. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for CJUSD or its agents under worker's compensation acts, disability benefits acts or other employee's benefits acts.
22. **Default** In the event of default on the part of CJUSD in any of the terms of this agreement, which default continues for a period of not less than ten (10) days after written notice from the CITY to CJUSD, CITY may terminate further use of Facilities under this permit and may eject any persons who enters by reason of the permission granted in this agreement.
23. **Termination** Either party may terminate this agreement by written notice of not less than thirty (30) days. CJUSD are responsible for all fee payments which are due at the time of termination.
24. **Supervision of use upon facilities closure** In the event that CITY is required to close any part of the facilities due to equipment failures, budget crisis, or physical deterioration of any kind, CITY shall give written notice of the closure to CJUSD & all right of CJUSD to use the facilities shall be suspended during the time of closure. In the event of a contamination closure, the CITY will provide as much notice as possible.
25. **Entry** Officials & employees of CITY shall have the right to enter Pool for the purposes of inspection, maintenance, repair, investigation or survey at times necessary or convenient. Entry by CITY shall be accomplished in such a manner as to cause minimum reasonable interference with the activities of CJUSD in its use of Pool.
26. **Utilities** CITY shall provide all of the utilities used by CJUSD at Pool and billed as indicated above.

27. **Maintenance, Waste** CITY shall maintain Pool in a reasonable condition. CJUSD shall not, during its use, commit or permit any waste or nuisance upon Pool nor any damage or defacement nor any act or use prohibited by any law or ordinance and CJUSD shall, insofar as it is able, act to prevent the waste of any utilities provided by CITY to Pool.
28. **Use of Furniture** The permission granted to CJUSD by CITY shall include such furniture and fixtures as are presently at, or may in the future be provided by CITY to Pool. CJUSD agree to indemnify CITY against damages to such furniture and fixtures caused by the acts of CJUSD, or its members, in excess of ordinary wear and tear. CITY shall designate how facility is to be used and where the furniture is to be stored.
29. **Storage** CITY shall provide CJUSD with minimal assigned storage space during the swimming season if needed. All items must be removed by the end of the CITY season. Storage shall be used for non-food items only.
30. **Other Facilities** CJUSD shall request use of other facilities not covered by this agreement through normal permit process of CITY. All rental fees and charges shall be paid prior to use of other facilities.
31. **Authority** CJUSD warrants that it possesses the financial resources to discharge the responsibilities it has assumed under this agreement.
32. **No Discrimination** CJUSD shall not discriminate in its use of Pool on the basis of sex, creed, race, disability or national origin, or any other basis forbidden by local, state or federal law.
33. **No Assignment** CJUSD may not assign its rights under this agreement.
34. **Modification**. This agreement may not be modified except if such modification is in writing and signed by both parties.

35. **Notices.** Notices or payments specified in this agreement shall be delivered to the parties as follows:

CITY: Dylan Feik
707-942-2806
City of Calistoga
1232 Washington St.
Calistoga, CA 94515

CJUSD: Erin Smith-Hagberg
707-942-4703
Calistoga Joint Unified School District
1520 Lake St.
Calistoga, CA 94515


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CALISTOGA

By: 
Dylan Feik
City Manager

Date: 12/21/18

CALISTOGA JOINT UNIFIED SCHOOL DISTRICT

By: 
Erin Smith-Hagberg
CJUSD

Date: 12/12/18

SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement ("Agreement") is between the City of Calistoga ("CITY") and Dylan Feik ("FEIK") (collectively "the Parties"). This Agreement is made in consideration of the following facts, among others.

BACKGROUND FACTS

A. FEIK has been employed by CITY as the City Manager since February 2016 under an employment agreement dated February 2, 2016, as amended effective June 19, 2018 (the "Employment Agreement"); and

B. The Parties have agreed that it is in the best interests of the City and FEIK to enter into this Separation and Release Agreement whereby FEIK has indicated a desire to resign his employment with the City; and

C. Subject only to the excluded items specifically expressed in this Agreement, the Parties wish to resolve all issues related to FEIK's employment with the CITY.

NOW, THEREFORE, CITY and FEIK, in consideration of the mutual covenants and agreements herein contained, agree as follows:

AGREEMENT

1. Incorporation of Recitals

The factual recitals set forth above are hereby expressly incorporated into this Agreement as if set forth in full in this provision.

2. Resignation From Employment

A. FEIK hereby resigns from his position as City Manager, effective April 17, 2019 (the "Resignation Date").

B. FEIK agrees to assist the City to ensure a smooth transition to an Acting City Manager who will succeed him. FEIK will make himself available to the Acting City Manager, upon reasonable notice, to answer questions and otherwise assist in the transition to new management.

3. Compensation and Benefits.

A. On April 17, 2019, CITY shall deliver payment to FEIK in the amount of One Hundred Sixteen Thousand Six Hundred and Eighty-Four Dollars and Forty-One Cents (\$116,684.41) ("the Severance Payment"). This Severance Payment is derived from the following:

1. Accrued vacation as of April 17, 2019 in the amount of 20.91 hours (with a value of \$1,903.65);
2. Accrued sick leave as of April 17, 2019 in the amount of 124.73 hours (with a value of \$11,355.42);
3. Accrued executive leave as of April 17, 2019 in the amount of 96 hours (with a value of \$8,739.84); and
4. A separation payment in the amount of ninety-four thousand six hundred and eighty-five dollars and fifty cents (\$94,685.50), which is equivalent to an amount equal to six (6) months' salary, pursuant to the Employment Agreement.

B. All payments made pursuant to Section 3(A) of this Agreement shall be subject to all customary withholdings, and shall be issued in a separate check than FEIK's final paycheck.

C. To the extent provided by law and by CalPERS, FEIK shall be eligible to continue his medical and dental coverage through the Consolidated Omnibus Budget Reconciliation Act ("COBRA") as follows:

1. Medical: The City will pay 90% of FEIK's monthly medical COBRA premiums necessary to continue his medical coverage through the period starting on the Resignation Date and ending on the earliest to occur of: (i) October 17, 2019; or (ii) the date FEIK obtains new employment and becomes eligible for medical coverage. In the event that FEIK obtains new employment, FEIK must immediately notify the City of such event. The City shall send the premium payments directly to FEIK by regular United States mail at least five (5) days before the beginning of the month.

2. Dental: The City will contribute 90% of FEIK's monthly dental COBRA premiums necessary to continue his dental coverage through the period

starting on the Resignation Date and ending on the earliest to occur of: (i) October 17, 2019; or (ii) the date FEIK obtains new employment and becomes eligible for dental coverage. FEIK shall immediately notify the City in the event that he obtains new employment. At least five (5) days before the beginning of the month, FEIK shall deliver, by regular United States mail, a payment in an amount equal to 10% of his monthly dental COBRA premiums, plus a 2% required administration fee, to the City c/o Gloria Leon, Administrative Services Director, 1232 Washington Street, Calistoga, CA 94515.

D. CITY expressly states, and FEIK expressly acknowledges and agrees, that any tax consequences arising from FEIK's decision regarding the payment option are FEIK's to investigate and address based on independent legal advice. FEIK further agrees that he will hold harmless and indemnify CITY from and against any claims, costs, and expenses, limited to payroll taxes, tax deficiencies, penalties, and interest incurred in connection with any investigation, challenge, levy, or assessment by the Internal Revenue Service, the State Franchise Tax Board, or any other taxing authority of any state, locality, or country with respect to the non-payment of taxes by reason of the payment described in this Section 3. FEIK also agrees to notify the CITY in the manner provided herein of any action or notice served upon him by any taxing authority so as to afford the CITY the opportunity to address the matter.

4. **Consideration.** FEIK acknowledges and agrees that the amounts and processes promised in this Agreement exceed what he is entitled to receive under his Employment Agreement or under CITY's standard policies and procedures, and, therefore, constitute valid legal consideration for the Agreement.

5. **Unemployment Insurance.** CITY will not contest FEIK's application, if any, for unemployment insurance benefits. The CITY does not admit or deny, by doing so, that FEIK has a right to receive unemployment insurance benefits.

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6. Property and Equipment.

A. On or before the Resignation Date, FEIK shall remove from his CITY office all of his personal property, including but not limited to, pictures, plaques, certificates, and books.

B. On or before the Resignation Date, FEIK shall return to CITY all CITY property he has in his possession or control, including but not limited to credit cards, entry cards, keys, identification badges, tablets/IPAD and computer data.

7. Release of Claims.

A. FEIK represents that he has not filed any complaint, grievance, claim, or action against CITY or any of its City Council members, officers, agents, directors, employees or assigns (collectively, "RELEASEES") with any state, federal, or local agency, board, arbitrator, or court, and will not do so at any time hereafter, based on any matters arising out of or relating to his employment with CITY and/or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

B. FEIK hereby releases and forever discharges CITY and RELEASEES from any and all claims, liabilities, demands, causes of action, costs, expenses, damages, indemnities, and obligations of every kind, in law, equity or otherwise, known or unknown, arising out of or in any way related to FEIK's CITY employment or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

C. Nothing provided in the Agreement is intended to abrogate the duties owed by CITY to FEIK pursuant to the Government Tort Claims Act.

D. CITY hereby waives the notice requirement of Section 7.a of the Employment Agreement.

E. Except as otherwise set forth in this Agreement, CITY further releases and forever discharges FEIK from any and all claims, liabilities, demands, causes of action, costs, expenses, damages, indemnities, and obligations of every kind, in law, equity or otherwise, known or unknown, arising out of or in any way related to FEIK's CITY

employment or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

F. Nothing in this Agreement shall be construed as a release by any Party of any obligation or claim arising out of a breach of this Agreement.

8. Waiver and Release of Discrimination Claims. FEIK understands and acknowledges that Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Federal Family and Medical Leave Act of 1993, the California Family Rights Act of 1991, the California Fair Employment and Housing Act, and other statutes may provide FEIK with the right to bring an action against CITY if FEIK believes he has been discriminated against based on, among other things, race, ancestry, creed, color, religion, sex, sexual orientation, marital or domestic partner status, national origin, age, status as an individual who has filed a claim for workers' compensation benefits or who has sustained an industrial injury, physical or mental handicap and/or disability. FEIK understands the rights afforded to him under these Acts and agrees that he will not bring any action against CITY based on any alleged violation(s) of these Acts. FEIK hereby waives any right to assert a claim for any relief under these Acts, including but not limited to back pay, attorneys' fees, damages, reinstatement, and/or injunctive relief. In addition, FEIK also waives any right to recover any relief as a result of any such proceeding, or any other proceeding, initiated on his behalf.

9. Waiver of Civil Code Section 1542.

The release contained herein is intended to be complete and final and to cover not only claims, demands, liabilities, damages, actions and causes of action which are known, but also claims, demands, liabilities, damages, actions and causes of action which are unknown or which FEIK does not suspect to exist in his favor which, if known at the time of executing this Agreement might have affected his actions, and therefore he expressly waives the benefit of the provisions of section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

FEIK hereby expressly waives and relinquishes all rights and benefits which he has or may have had under section 1542 of the California Civil Code or the law of any other state, country, or jurisdiction to the same or similar effect to the full extent that he may lawfully waive such rights. As a part of this waiver, FEIK waives any right to notice and an opportunity for a hearing regarding his separation from CITY employment.

10. No Admission of Liability.

This Agreement and compliance with it shall not operate or be construed as an admission by CITY of any liability, misconduct, or wrongdoing whatsoever against FEIK or any other person; nor as an admission by CITY of any violation of the rights of FEIK or any other person; nor as a violation of any order, law, statute, duty, or contract whatsoever against FEIK or any other person. Rather, CITY expressly denies any liability to FEIK.

11. Limitation on Disclosure of Agreement; Communications With Prospective Employers.

A. The Parties agree not to issue any press release regarding the terms or conditions of this Agreement and not to disclose this Agreement to third parties except as required by law. In response to inquiries by FEIK's prospective employers, and in the absence of a written release from FEIK, CITY will provide only the dates of his employment, position held, and final salary.

B. Individual City Council members may, in their capacities as private citizens only, and without the use of CITY letterhead or representation that they speak on behalf of the CITY, provide personal letters of reference and/or recommendations at their discretion to assist in obtaining comparable employment and salary/benefits package to

the which he was provided under the Employment Agreement. FEIK expressly waives any and all claims against CITY arising out of or related to such individual letters.

12. Confidentiality. CITY shall maintain FEIK's personnel, employment and health records as confidential and private as required by applicable law. Such records shall not be released without FEIK's written authorization except as required by law.

13. Mutual Drafting; Governing Law.

This Agreement shall be deemed to have been jointly drafted by the Parties and shall be governed by and construed in accordance with the laws of the State of California.

14. Entire Agreement:

This Agreement constitutes the entire agreement between FEIK and CITY. No other promise or inducement has been offered for this Agreement. Any amendments to this Agreement must be in writing, signed by duly authorized representatives of both CITY and FEIK, and must state that the parties intend to amend the Agreement. Any purported amendment failing to comply with this provision shall be null and void.

15. Severability.

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

16. Venue of Actions; Costs and Fees.

Venue of any legal action shall be in Napa County. If any legal action is instituted to enforce any provision of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of its provisions, the court shall award the prevailing party reasonable attorneys' fees and other litigation costs incurred in that action, in addition to any other relief to which the prevailing party may be entitled.

Nothing in this Section 16 shall prevent the Parties from mutually agreeing to binding arbitration of any dispute, in which case the arbitrator may award attorney's fees and litigation costs to the prevailing party as described above.

17. Voluntary Execution of Agreement; Opportunity to Consult with Attorney.

FEIK represents that he has carefully read this entire Agreement and that he knows and understands its contents. FEIK and the CITY have each had the opportunity to receive independent legal advice from attorneys of their own choice with respect to the preparation, review, and advisability of executing this Agreement. FEIK also represents that the CITY has not provided legal advice to him. FEIK further represents and acknowledges that he has freely and voluntarily executed this Agreement after independent investigation and without fraud, duress, or undue influence, with a full understanding of the legal and binding effect of this Agreement and with the approval of his legal counsel, if any.

18. Indemnification.

In accordance with the California Government Torts Claims Act, CITY shall pay, defend, save harmless, and indemnify against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of FEIK'S duties as City Manger through and including April 17, 2019. This Section is not intended to modify, expand, or diminish the obligations of CITY under Government Tort Claims Act.

19. Conflict with City Personnel Rules; Termination of Employment Agreement.

A. The Employment Agreement shall be of no further force and effect and shall be considered terminated on the Resignation Date.

B. Notwithstanding any other provision herein to the contrary, if the provisions of this Agreement differ or are in conflict with CITY's personnel rules and regulations, the CITY Code or other rules, then the provisions of this Agreement shall prevail.

20. Notice.

Excepting the notice of revocation described in Section 21, any and all notices given to any Party under this Agreement shall be given as provided in this Section. All notices given to either Party shall be made by certified or registered United States mail and regular United States mail, or by personal delivery, at the noticing Party's discretion, and addressed to the Parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three consecutive calendar days following deposit of the same in the United States mail.

As to FEIK:

Dylan Feik
108 Jutta Way
Windsor, CA 95492

As to CITY:

CITY COUNCIL
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

With a copy to:

CALISTOGA CITY ATTORNEY
Michelle Marchetta Kenyon
Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612

21. Right of Revocation; Effective Date.

FEIK has the right to revoke this Agreement for any reason within seven (7) days after he signs it. To be effective, FEIK's notice of revocation must be in writing and must be hand-delivered to CITY's City Attorney at 1901 Harrison Street, 9th Floor, Oakland, California 94612 or emailed to City Attorney at mkenyon@bwslaw.com. If emailed, the revocation must be sent within the seven-day period. If hand-delivered, it must be given to the City Attorney within the seven-day period. This Agreement shall not become effective until the seven-day revocation period has expired. Therefore, this Agreement shall take effect either upon approval by the City Council or the eighth day following FEIK's signature, with the signature date being day one, whichever date is later ("the Effective Date").

22. Execution of Agreement. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, FEIK has signed and CITY, following a duly passed resolution approving the above terms, has directed its authorized representative to sign this Agreement.

Dated: April 10, 2019

DYLAN FEIK



DYLAN FEIK

Dated: April 19, 2019

CITY OF CALISTOGA



By: _____

Chris Canning, Mayor

Approved as to Form:

Michelle Marchetta Kenyon
City Attorney, City of Calistoga

22. Execution of Agreement. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, FEIK has signed and CITY, following a duly passed resolution approving the above terms, has directed its authorized representative to sign this Agreement.

Dated: April 10, 2019

DYLAN FEIK



DYLAN FEIK

Dated: April __, 2019

CITY OF CALISTOGA

By: _____
Chris Canning, Mayor

Approved as to Form:



Michelle Marchetta Kenyon
City Attorney, City of Calistoga

CONSULTANT SERVICES AGREEMENT

**Related to Design Services for High Intensity Activated
Crosswalk Beacon Pathway Improvement
On Silverado Trail near Solage Calistoga and Silver Rose**

THIS AGREEMENT is entered into as of the 18th day of December, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and BKF Engineers, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with the preparation of plans and specifications for a high intensity activated cross walk beacon pathway on Silverado Trail near the Solage Calistoga and Silver Rose Resorts; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Greg Hurd, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than December 18, 2018 and be completed not later than June 30, 2019. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Thirty Thousand Dollars (\$30,000), unless amended. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the

appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

If to City: City Clerk
City of Calistoga
1232 Washington Street.
Calistoga, CA 94515

26. Consultant's Books and Records.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work, Schedule of Performance, Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Dylan Feik, City Manager

Date: 12/20/18

BKF Engineers

By: 
Greg Hurd, Principal/Vice President

Date: 1-2-19

ATTEST:
Kathy Flamson

By: 
City Clerk

PROPOSAL CONTRACT

AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT

RFPEs: (PW#13-5556)

RECYCLED WATER PUMP STATION PROJECT

This AGREEMENT is made and entered into as of the date of execution by the City of Calistoga, a municipal corporation, hereinafter referred to as "CITY" and Allard General Engineering, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Recycled Water Pump Station Project**.

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 45 calendar days from Notice to Proceed.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

2.2 CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website **and to the City of Calistoga Public Works Department**.

2.4 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Thirty Eight

Thousand Six Hundred Sixty Dollars (\$38,660.00). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

3.3 Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that

CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

11.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

12.0 HOLD HARMLESS

12.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

13.0 INSURANCE

13.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non-owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 RETENTION

None.

15.0 BONDS

Not Applicable.

16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 45 calendar days of the Notice to Proceed.

17.0 WARRANTIES

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.

(SEE FOLLOWING PAGE)

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner" and Allard General Engineering., (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Recycled Water Pump Station Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish warranty security for the work performed pursuant to the Construction Contract in the amount of Thirty Eight Thousand Six Hundred Sixty Dollars (\$38,660.00) to guarantee replacement and repair of the improvements as described in the Construction Contract for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being not less than ten percent (10%) of the amount payable by the terms of the Construction Contract, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the Improvements by the City Council of Owner, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by Owner in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner or its successors or assigns.

Surety shall provide Owner with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2019, the names and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)

By: _____
Signature

Print Name

Title

*Note:
To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.*

(Surety)

(Address)

By: _____
Signature

Print Name

Title

18.0 DISPUTES

18.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

18.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

18.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

19.0 NOTICES

19.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

19.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515
Attention: Mike Kirn
Public Works Director
Public Works Department

19.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Allard General Engineering
Attn: Zeb Allard
1418 4th Street
Calistoga, CA 94515


20.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

ALLARD GENERAL ENGINEERING

By: 
Zeb Allard, Owner
Date 1-7-19

CITY OF CALISTOGA,
a Municipal Corporation

By: 
Dylan Feik, City Manager
Date 12/19/18

ATTEST:


Kathy Flanson, City Clerk

ATTACHMENT A
SCOPE OF WORK PROPOSAL
COMPENSATION SCHEDULE

Allard General Engineering
1418 4th Street
Calistoga, CA 94515
707-570-5707
Zallard.ge@gmail.com

Attachment A

ADDRESS

City of Calistoga
Derek Rayner.

PROPOSAL 1024

DATE 09/30/2018

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
09/30/2018		Recycle Pump Station Demo and Install New Pump Station.			
09/30/2018	Labor	Remove all old pipe and fittings and off haul all debris.	1	12,300.00	12,300.00
09/30/2018	Labor	Install pipe, pumps, fittings, valves, and flow meters.	1	14,260.00	14,260.00
09/30/2018	Excavator	Excavate for 12" Recycle water line. Trench to be around 12' deep and 50' long. Move and set shoring.	1	4,200.00	4,200.00
09/30/2018	Labor	Check grades, clean trench, and move shoring.	1	2,700.00	2,700.00
09/30/2018	Labor	Install 12" pipe and fitting.	1	5,200.00	5,200.00

This price includes all landfill fees.

This price includes all labor needed to remove and replace pipe and fittings.

TOTAL \$38,660.00

Accepted By

Accepted Date

ATTACHMENT B
SUBCONTRACTORS

NONE

PROPOSAL CONTRACT
AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT
RFPS: (PW#13-5556)
RECYCLED WATER PUMP STATION PROJECT

This AGREEMENT is made and entered into as of the date of execution by the **City of Calistoga**, a municipal corporation, hereinafter referred to as "CITY" and **Telstar Instruments, Inc.**, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Recycled Water Pump Station Project**.

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 45 calendar days from Notice to Proceed.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

2.2 CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website **and to the City of Calistoga Public Works Department**.

2.4 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed One Hundred

Seven Thousand Eight Hundred Eight Dollars (\$107,808.00). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

3.3 Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

11.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

12.0 HOLD HARMLESS

12.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

13.0 INSURANCE

13.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non-owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 RETENTION

None.

15.0 BONDS

Not Applicable.

16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 45 calendar days of the Notice to Proceed.

17.0 WARRANTIES

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.

(SEE FOLLOWING PAGE)

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner" and **Telstar Instruments, Inc.** (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Recycled Water Pump Station Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish warranty security for the work performed pursuant to the Construction Contract in the amount of **One Hundred Seven Thousand Eight Hundred Eight Dollars (\$107,808.00)** to guarantee replacement and repair of the improvements as described in the Construction Contract for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being not less than ten percent (10%) of the amount payable by the terms of the Construction Contract, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the Improvements by the City Council of Owner, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by Owner in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner or its successors or assigns.

Surety shall provide Owner with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2019, the names and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)

By:

Signature

Print Name

Title

Note:

*To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.*

(Surety)

(Address)

By:

Signature

Print Name

Title

18.0 DISPUTES

18.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

18.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

18.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

19.0 NOTICES

19.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

19.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515
Attention: Mike Kirn
Public Works Director
Public Works Department

19.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Tak Koo
Telstar Instruments, Inc.
1717 Solano Way, Unit 34
Concord, CA 94520

20.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

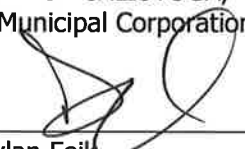
21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

TELSTAR INSTRUMENTS, INC.

By: 
Tammy Misenhimer
Contracts Administrator
Date 1-8-2019

CITY OF CALISTOGA,
a Municipal Corporation

By: 
Dylan Feik
City Manager
Date 12/19/18

ATTEST:


Kathy Flammson, City Clerk

21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.


TELSTAR INSTRUMENTS, INC.

By: 

Tammy Misenhimer
Contracts Administrator

Date 1-8-2019

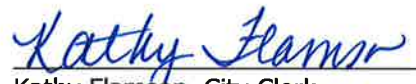
CITY OF CALISTOGA,
a Municipal Corporation

By: 

Dylan Feik
City Manager

Date 12/19/18

ATTEST:



Kathy Flansburg, City Clerk

ATTACHMENT A
SCOPE OF WORK PROPOSAL
COMPENSATION SCHEDULE

ATTACHMENT B
SUBCONTRACTORS

NONE

PROPOSAL CONTRACT
AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT
KIMBALL WATER TREATMENT PLANT ELECTRICAL WIRING PROJECT

This AGREEMENT is made and entered into as of the date of execution by the **City of Calistoga**, a municipal corporation, hereinafter referred to as "CITY" and **Telstar Instruments, Inc.**, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Kimball Water Treatment Plant Electrical Wiring Project.**

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 30 calendar days from execution of contract.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

2.2 CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website **and to the City of Calistoga Public Works Department.**

2.4 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Fifty Thousand Dollars (\$50,000). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

3.3 Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or

resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

11.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

12.0 HOLD HARMLESS

12.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

13.0 INSURANCE

13.1 Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non-owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property

damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 RETENTION

None.

15.0 BONDS

Not Applicable.

16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 30 calendar days of the execution of contract.

17.0 WARRANTIES

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.

(SEE FOLLOWING PAGE)

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner" and **Telstar Instruments, Inc.** (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Kimball Water Treatment Plant Wiring Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish warranty security for the work performed pursuant to the Construction Contract in the amount of **Fifty Thousand Dollars (\$50,000)** to guarantee replacement and repair of the improvements as described in the Construction Contract for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars (\$_____), lawful money of the United States, being not less than ten percent (10%) of the amount payable by the terms of the Construction Contract, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the Improvements by the City Council of Owner, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by Owner in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner or its successors or assigns.

Surety shall provide Owner with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2019, the names and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)

By: _____
Signature

Print Name

Title

*Note:
To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.*

(Surety)

(Address)

By: _____
Signature

Print Name

Title

18.0 DISPUTES

18.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommend methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

18.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

18.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

19.0 NOTICES

19.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

19.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515
Attention: Mike Kirn
Public Works Director
Public Works Department

19.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Tak Koo
Telstar Instruments, Inc.
1717 Solano Way, Unit 34
Concord, CA 94520

20.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

TELSTAR INSTRUMENTS, INC.

By: _____

Tammy Misenhimer
Contracts Administrator

Date

JANUARY 3, 2019

CITY OF CALISTOGA,
a Municipal Corporation

By: _____

Dylan Feik
City Manager

Date

1/8/19

ATTEST:

Melissa Velasquez, Deputy City Clerk

ATTACHMENT A
SCOPE OF WORK PROPOSAL
COMPENSATION SCHEDULE

Proposal Dated
December 26, 2018



Contractor License #422364

**CONTROL SYSTEM INTEGRATION • INSTRUMENTATION SALES & SERVICE
SCADA • PLC/HMI • Telemetry • Calibration • Maintenance**

December 26, 2018

City of Calistoga
3522 Evey Road, Calistoga, CA 94515
Sent via Email: jrosenthal@ci.calistoga.ca.us

Attn: Jeremy Rosenthal
Subject: City of Calistoga / Kimball Water Treatment Plant Wire Replacement
Reference: SR34264 Rev B

Drawings: N/A
Specifications: N/A

Dear Jeremy,

Telstar is pleased to provide a quote for the referenced project. Telstar will replace power and control wiring in the vault near the clarifier. The wire will be replaced from termination point to termination point, removing existing splices found throughout the wire run. Per our terms and conditions below, Telstar has a standard warranty for one year for all work performed by Telstar.

By accepting this proposal from Telstar you agree to treat this as confidential information.

SCOPE OF SERVICES:

1. Remove old wiring from one 2", one 1", one ¾" conduit from control building to clarifier / dry bed area. Wire will be removed in its entirety, from termination point to termination point. Telstar assumes that wire can be easily removed from the existing conduits in their current state. If wires cannot be removed, the conduit may need to be replaced, which will require additional work outside of the scope of this quotation.
2. Cut out damaged conduit in the one area with suspected damage, and stub up into a new, customer supplied Christy box. The excavation and backfill for the new Christy box is provided by others.
3. Provide and pull in new wiring from control building termination to the final field termination through existing conduits. This includes power wire, signal wire, and spare wire to replace existing spare wire. Spares will be coiled and left in the vault near the clarifier. All wires will be labeled at each end. No new conduits will be installed under this scope of work.
4. Provide and install four (4) 30A, non-fused, NEMA 3R disconnects in clarifier / dry bed area to replace existing disconnects.



5. Replace flexible sealtite and sealtite connectors in clarifier / dry bed area for conduits where wiring is to be replaced. Provide and replace receptacle and junction box covers where necessary.
6. The labor estimate for this scope for 168 man hours.
7. This scope is an estimate and will be performed on a T&M basis. This will allow the customer to request any additional work or services such as troubleshooting or preventative maintenance as desired.

Materials Budgetary Estimate for this Scope.....\$13,910.00

Shipping and Handling for Telstar Supplied Materials IS NOT INCLUDED

Sales Tax IS NOT INCLUDED

Labor Budgetary Estimate for this Scope.....\$34,015.00

Shipping and Handling for Telstar Supplied Materials IS NOT INCLUDED

Sales Tax IS NOT INCLUDED

Sales Tax Est - \$1,147
Handling Est - \$928
Total Est - \$50,000

CLARIFICATIONS, EXCEPTIONS, AND EXCLUSIONS

- a. All pricing is based on Telstar's standard Terms and Conditions.
- b. Telstar's quotation includes only those items listed above. Requests for additions/deletions from our scope will require a change in the quoted price.
- c. We assume no responsibility for performance, applicability, start-up, testing, or acceptance of any equipment where wiring is NOT to be replaced by Telstar under this proposal.
- d. Telstar is supplying only equipment specified and noted above.
- e. All trenching / back-filling necessary to complete the work described above **IS EXCLUDED** and will be performed **BY OTHERS**.
- f. The Christy box mentioned in "SCOPE OF SERVICES, Item 2" will be supplied **BY OTHERS**.
- g. Anything outside of this scope of work that is found to be out of NEC rules and regulations will be recommended to be replaced and is not included in this quote.
- h. The work to be performed is with the assumption that Telstar will have access to all equipment in a de-energized state and does not include any stand by time.
- i. Electrical labor and materials performed and installed prior to December 19, 2018 for the Kimball Water Treatment Plant clarifier area investigation and troubleshooting is not included in the scope and budgetary estimate for this quotation.

TERMS AND CONDITIONS

Base Terms: Quotation is valid for 30 days from above date. Our terms are due and payable 30 days from date of invoice. Payments must be made on a minimum of a monthly basis. If payment is not received by the 30th day, a .05% daily service charge (18-3/4% per annum) will be charged on all accounts past due. Attorney's fees, court costs and costs of collection will be paid to prevailing party. Permits and bonding are excluded unless otherwise noted herein. Our standard insurance applies unless agreed to in writing by Telstar Instruments. We accept no



responsibility for consequential damages and our standard warranty applies. Please reference the above stated quote number in all correspondence and purchase orders. Unless otherwise noted, this quote is based on standard straight time hours and does not include any prevailing wage rates unless agreed in writing by Telstar Instruments. Only original or faxed copies of quotes will be honored by Telstar Instruments, e-mailed quotes are not valid. The price quoted herein is for the labor and materials specifically listed within the body of this quote. Service calls carry a 4-hour minimum per person.

Cancellation charges apply including engineering, labor, materials, quote and estimating time, markup, % of profit, return goods fees, etc. at the time of written cancellation notice to Telstar Instruments.

Limitation of Liability: (a) In no event shall Telstar Instruments, its suppliers or subcontractors be liable for special, indirect, incidental or consequential damages, whether in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of the Purchaser or other third parties for any damages. Telstar Instruments liability for any claim whether in contract, warranty, tort, negligence, strict liability, or otherwise for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or furnished under this Agreement, or from any services rendered in connection therewith, shall in no case exceed one-fourth (1/4) of the purchase price allocable to the Equipment or part thereof or Services which gives rise to the claim. (b) All causes of action against Telstar Instruments arising out of or relating to this Agreement or the performance or breach hereof shall expire unless brought within one year of the time of accrual thereof. (c) In no event, regardless of cause, shall Telstar Instruments be liable for penalties or penalty clauses of any description or for indemnification of Purchaser or others for costs, damages, or expenses arising out of or related to the Equipment and/Services.

Force Majeure: Telstar Instruments shall neither be liable for loss, damage, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority or of Purchaser, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be extended by period equal to the delay plus a reasonable time to resume production, and the price will be adjusted to compensate Telstar Instruments for such delay.

Cancellation: Any order may be cancelled by Purchaser only upon prior written notice and payment of termination charges, including but not limited to, all costs identified to the order incurred prior to the effective date of notice of termination and all expenses incurred by Telstar Instruments attributable to the termination, plus a fixed sum of ten (10) percent of the final total price to compensate for disruption in scheduling, planned production and other indirect costs.

Entire Agreement: This Agreement constitutes the entire agreement between Telstar Instruments and Purchaser. There are no agreements, understandings, restrictions, warranties, or representations between Telstar Instruments and Purchaser other than those set forth herein or herein provided.

Bonding: Cost of Bonding is not included. Contact Telstar Instruments for a quote if bonding is required.



We look forward to working with you on this project. If you have any questions, please contact me at the phone number below.

Sincerely,

A handwritten signature in cursive script that reads "Erik Johnson".

Erik Johnson
Project Engineer
Telstar Instruments
(916) 646-1999

ATTACHMENT B
SUBCONTRACTORS

NONE

NAPA COUNTY AGREEMENT NO. 190214c

SPACE LICENSE AGREEMENT

THIS SPACE LICENSE AGREEMENT (hereinafter referred to as "Agreement" or "License Agreement") is made and entered into as of this 1st day of January, 2019, by and between the NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "Licensor", and the CITY OF CALISTOGA, a municipal corporation whose business address is 1232 Washington Street, Calistoga, CA 94515, hereinafter referred to as "Licensee" and collectively with Licensor, the "Parties."

RECITALS

WHEREAS, Licensor is the owner of certain real property located at 1435 North Oak Street, Calistoga, California ("Premises"); and

WHEREAS, the city of Calistoga Recreation Services Division is in need of professional office space to house staff and allow public access to staff; and

WHEREAS, in light of this public purpose, Licensor is willing to make available to Licensee on a space license basis, the use of administrative office space and non-exclusive use of common area facilities in the Premises; and

WHEREAS, the services provided by Licensee achieve public purposes contemplated by Resolution 2018-36, by which the Board of Supervisors of Napa County has authorized the County Executive Officer to execute License Agreements to further the public purposes served by a licensee's use of the Premises.

TERMS

NOW, THEREFORE, BE IT AGREED by Licensor and Licensee as follows:

1. DESCRIPTION OF PREMISES: Licensor hereby agrees to make available on a space license basis and not as a lease, and subject to the conditions of this License Agreement on the terms and conditions set forth herein below the use of a portion of the building, the general location and layout of which is shown on Exhibit A, attached hereto and incorporated herein by reference ("Building") and non-exclusive use of related common area facilities (hereinafter referred to as "Common Area") including but not limited to common corridors, hallways, kitchen, restrooms, lobbies, telephone areas, utility or telephone rooms, parking, sidewalks and other public areas.

2. TERM: The term of this Agreement shall commence January 1, 2019 and terminate on June 30, 2019 unless terminated by either party for the convenience of that party by giving the other party no less than thirty (30) days prior written notice or by mutual agreement of the parties.

3. **TERMINATION UPON SALE OF PROPERTY:** As of the date of this Space License Agreement, Licensee acknowledges that Licenser is in active negotiations to sell the Premises. Notwithstanding the terms set forth in paragraph two above, the Space License Agreement shall terminate upon the close of escrow of Licenser's sale of the Premises. Licenser shall have no obligation to negotiate an extension of this Space License on behalf of Licensee and the new owner of the Premises

4. **LICENSE FEE:** The license fee shall be in the amount of **Eight Hundred dollars (\$800) per month**, payable in advance on the first day of each calendar month.

5. **FACILITIES, UTILITIES, MAINTENANCE AND EQUIPMENT:**

(a) **Building Facilities.** It is understood and agreed that Licenser will provide satisfactory and adequate heating, lighting, air conditioning, water, sewer, and electrical facilities within the Premises. Licenser agrees to maintain such facilities in reasonably good working order, repair and operation during the term of this Agreement.

(b) **Utilities:** No fee shall be charged to Licensee for the use of utilities.

(c) **Custodial and Maintenance Service.** Licensee acknowledges that the Premises are licensed for use by Licensee in a condition of cleanliness reflective of and consistent with the use by Licenser. Licenser and Licensee acknowledge that custodial services will be performed by Licenser.

6. **USE OF PREMISES:** Licensee shall use the Premises only for office purposes.

7. **HOLD HARMLESS/INDEMNIFICATION:** Licensee shall hold Licenser harmless from all liability or claims for injury to any person or damage to any property occurring in, on, or about the Premises which arises from any negligent or intentional act or omission of Licensee or the officers, agents, or employees of Licensee. Licenser shall hold harmless and indemnify Licensee for any liability or claims for injury to any person or damage to any property occurring in, or about the Premises which arises from any negligent or intentional act or omission of Licenser or the officers, agents, or employees of Licenser. If such injury or damage is caused by acts or omissions of both Licenser and Licensee and/or their respective officers, agents and employees, each party shall be responsible for its own share of the liability and attorneys' fees and court costs in accordance with the degree of relative fault as determined by agreement of the parties or judgment of a court of competent jurisdiction.

8. **INSURANCE:** Licensee shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, Licensee shall provide workers' compensation insurance for the performance of any of Licensee's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide Licenser with certification of all such coverages upon request by Licenser's Risk Manager.

(b) **Liability Insurance.** Licensee shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a**

company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of Licensee or any officer, agent, or employee of Licensee under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Licensee's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If Licensee owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b) (1) above. If Licensee or Licensee's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, Licensee shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of Licensor's Risk Manager, demonstrated by other evidence of coverage acceptable to Licensor's Risk Manager, which shall be filed by Licensee with the PUBLIC WORKS DEPARTMENT prior to commencement of performance of any of Licensee's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its Licensor number or title and department; shall be kept current during the term of this Agreement; shall provide that Licensor shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b) (1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b) (3) where the vehicles are covered by a commercial policy rather than a personal policy, Licensee shall also file with the evidence of coverage an endorsement from the insurance provider naming Licensor, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Licensee shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Licensee not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of Licensor shall pertain only to liability for activities of Licensee under this Agreement, and that the insurance provided is

primary coverage to Licensor with respect to any insurance or self-insurance programs maintained by Licensor. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by Licensor's Risk Manager, Licensee shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, Licensor's Risk Manager, which approval shall not be denied unless the Licensor's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of Licensee by this Agreement. At the option of and upon request by LICENSOR's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects Licensor, its officers, employees, agents and volunteers or Licensee shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. Licensee agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

9. DAMAGE TO PROPERTY OR PERSON. Licensor will not be liable for the following:

(i) Any loss or damage to property of Licensee or of others located in or on the Licensed Space, by theft or otherwise;

(ii) any injury or damage to persons or property within the Licensed Space resulting from fire, explosion, falling sheetrock, gas, electricity water, rain, snow or leaks from any part of the Licensed Space or from, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature;

(iii) any injury or damage caused by other licensees or any person(s) in the Premises, or by occupants of property adjacent to the Premises or common areas, or by the public or by the construction of any private, public or quasi-public work; or

(iv) any latent defect in construction of the Licensed Space, unless due to the active negligence and or intentional conduct of Licensor, its agents or invitees.

10. LICENSEE'S DUTY TO REPAIR.

(a) Except as provided in (b) below, if during the term of this Agreement, the Premises, or any portion thereof or improvements thereon are damaged or destroyed by any cause other than Licensor's intentional or solely negligent act, Licensee shall promptly repair the damage and restore the damaged area and improvements, without cost to Licensor to at least the same condition that existed before the damage or destruction, regardless of whether any insurance proceeds paid for the damage or destruction are sufficient to cover the entire cost of repair or restoration. During the repair and restoration, this Agreement shall remain in full force and effect and the rent payable shall not be abated in any way or to any extent.

(b) In no event shall Licensor be liable to Licensee for damages to the personal property or business of Licensee or any officer, employee, agent, contractor, licensee, sub Licensee or invitee of Licensee resulting from casualty or any other cause on or affecting the Premises, except that Licensor shall remain liable to Licensee for such damage or losses caused by the solely negligent, intentional and/or reckless acts and/or omissions of Licensor or any of its officers, employees, agents, contractors, or other licensees. The foregoing shall extend, but not be limited to, losses from fire, flood, burst pipes, utilities services outages, riot, war, earthquake, other acts of God, act of other tenants or invitees of County and/or other types of casualty.

11. NOTICES: Except as otherwise expressly provided herein, all communications between the parties required under this Agreement shall be deemed given when made in writing and delivered or deposited in the mail to such party at the address as follows:

LICENSOR: Napa County Department of Public Works
Attn: Rents and Leases
1195 Third Street, Room 101
Napa, California 94559

LICENSEE: City of Calistoga
1232 Washington Street
Calistoga, Ca 94515

The address to which notices and correspondence shall be mailed to either party may be changed by giving prior written notice of the change and the new address to the other party.

12. SURRENDER OF PREMISES UPON EXPIRATION OF THE AGREEMENT: Upon termination of this the Agreement, Licensee shall surrender and deliver up quiet possession of the Premises and the use of any fixtures and furnishings provided by Licensor in connection with such use.

13. TIME OF ESSENCE: Time is of the essence in regard to each provision of this Agreement.

14. INTERPRETATION/APPLICABLE LAW: This Agreement shall be construed and interpreted pursuant to the laws of the State of California. Venue for any dispute under this Agreement shall in the Superior Court of California, County of Napa, a unified court.

15. WAIVER: The waiver by either party of any breach of any provision of this Agreement at any time shall not be deemed to constitute a waiver of any other provision, or of the same provision in the future. It is the express intent of the parties that either party may strictly enforce the provisions of this Agreement at any time regardless of past conduct.

16. ATTORNEY'S FEES: In the event legal proceedings are instituted by either party to enforce any provision of this Agreement, the prevailing party shall be entitled to court costs and reasonable attorney fees.

17. **SEVERABILITY:** The provisions of this Agreement are severable and the unenforceability, invalidity, or illegality of any provision of this Agreement, as determined by a court of competent jurisdiction, shall not render the other provisions unenforceable, invalid or illegal.

18. **ENTIRE AGREEMENT:** This Agreement contains all of the agreements between the parties as to the subject matter thereof, supersedes all prior agreement and understandings on this subject, whether oral or written, and cannot be amended or modified except with the prior written consent of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CALISTOGA

By: 

DYLAN FEIK, City Manager/Chief Executive Officer

By: 

"Licensee"

COUNTY OF NAPA, a political subdivision of the State of California

By: 

MINH TRAN, County Executive Officer/Purchasing Agent 1/15/19

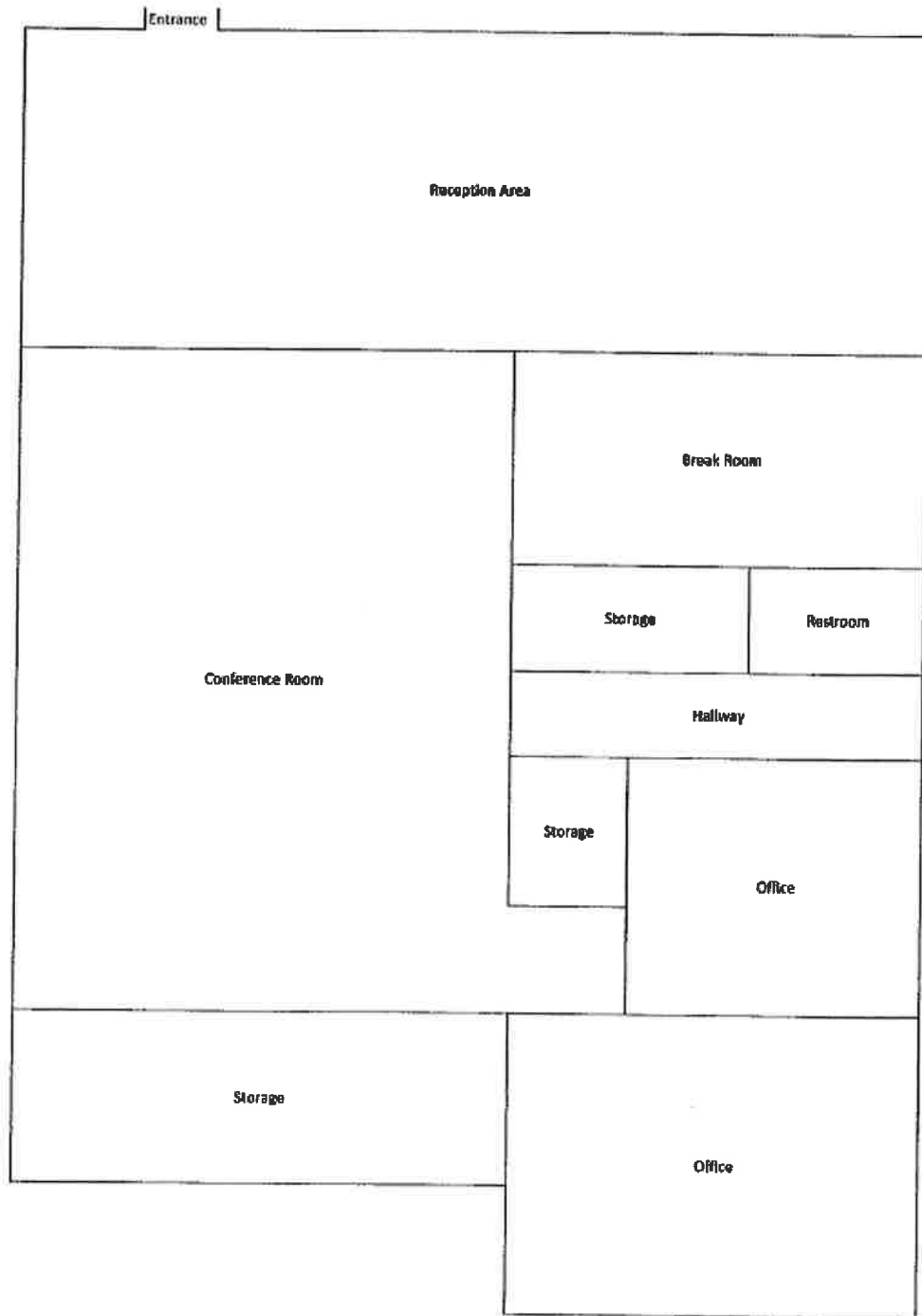
"Licensor"

APPROVED AS TO FORM
Office of County Counsel

By: Jason M. Dooley
Deputy County Counsel

Date: December 27, 2018

EXHIBIT "A"



Established 1986



ADDITIONAL COVERED PARTY

County of Napa, its officers, employees, agents and volunteers
1195 Third Street, Room 101
Napa, CA 94559
Attention: Department of Public Works - Rents & Leases

**Re: EVIDENCE OF COVERAGE & ADDITIONAL COVERED PARTY ENDORSEMENT AS REQUIRED BY
AGREEMENT OR CONTRACT: #18-596-CA**

Only as respects to Napa County's lease of property located at 1435 North Oak Street, Calistoga to the City of Calistoga for use as professional office space pursuant to Resolution No. 2018-36

Please be advised that the **City of Calistoga** participates in PARSAC, the Public Agency Risk Sharing Authority of California. As such, it is collectively and permissibly self-insured under Sections 990.4 and 990.8 of the California Government Code. The specifics of the self-insured program are listed below:

COVERAGE YEAR: July 1, 2018 - July 1, 2019

- General Liability including Automobile Liability
 - Public Officials Errors & Omission
- Limit: \$1,000,000 per occurrence group self-insurance
Occurrence Retention: \$10,000

CONDITIONS OF THIS ADDITIONAL COVERED PARTY ENDORSEMENT

Effective Date: January 1, 2019 Expiration Date: June 30, 2019

The coverage afforded as described above is subject to all terms, exclusions, conditions, definitions, and other provisions of the Public Agency Risk Sharing Authority of California's Liability Memorandum of Coverage. The coverage is afforded hereunder only where **City of Calistoga** is required by agreement or contract to name **County of Napa, its officers, employees, agents and volunteers** as Additional Covered Party.

If the **City of Calistoga** is required by agreement or contract to name **County of Napa, its officers, employees, agents and volunteers** as an Additional Covered Party and the agreement or contract requires the coverage provided to the Additional Covered Party to be primary, then the coverage provided by this endorsement shall be primary. In all other events, if collectible insurance with any insurer, coverage with any other joint powers authority or other self-funding mechanism is available to the Additional Covered Party named above covering a loss to which the PARSAC Memorandum of Coverage applies (whether on a primary, excess or contingent basis), the coverage of this Memorandum shall be in excess of, and shall not contribute with such other insurance or coverage; provided that this clause does not apply with respect to excess insurance or coverage purchased specifically to be in excess of such Memorandum. The bankruptcy of, insolvency of, or placement into rehabilitation or receivership by any regulatory agency of any joint powers authority or insurance company providing joint powers authority protection or insurance coverage to the Additional Covered Party, named above, shall not amend the application of this condition.

This Endorsement does not apply to liability arising out of the sole negligence of the Additional Covered Party named above.

The Public Agency Risk Sharing Authority of California shall waive its rights to subrogate against the Additional Covered Party.

Coverage is in effect as stated above and will not be cancelled except upon 30 days written notice to the Additional Covered Party.

Kin Ong, ARM
Risk Manager

January 9, 2019

cc: Dylan Feik, City of Calistoga

Form Revised 6/29/15

Established 1986



January 9, 2019

CERTIFICATE HOLDER

County of Napa, its officers, employees, agents and volunteers
1195 Third Street, Room 101
Napa, CA 94559
Attention: Department of Public Works - Rents & Leases

Re: EVIDENCE OF COVERAGE #18-596.1-CA

As pertains to Napa County's lease of property located at 1435 North Oak Street, Calistoga to the City of Calistoga for use as professional office space pursuant to Resolution No. 2018-36

To Whom It May Concern

Please be advised that the **City of Calistoga** participates in PARSAC, the Public Agency Risk Sharing Authority of California. As such, it is collectively and permissibly self-insured under Sections 990.4 and 990.8 of the California Government Code.

The Public Agency Risk Sharing Authority of California shall waive its rights to subrogate against the certificate holder.

The specifics of the self-insured program are listed below:

COVERAGE YEAR: July 1, 2018 - July 1, 2019

- General and Automobile Liability
- Public Officials Errors & Omission
 - Limit: \$1,000,000 per occurrence group self-insurance
 - Occurrence Retention: \$10,000
- Worker's Compensation:
 - Limit: \$500,000 per accident through group self-insurance
 - Employer's Liability: \$500,000
 - Occurrence Retention: \$25,000

Respectfully,

A handwritten signature in black ink, appearing to read 'Kin Ong', is written over a light blue horizontal line.

Kin Ong, ARM
Risk Manager

cc: Dylan Feik, City of Calistoga

CITY OF CALISTOGA

1232 Washington Street • Calistoga, CA 94515
Telephone 707-942-2828 – Public Works Dept.
Fax 707-942-9472
www.ci.calistoga.ca.us



March 6, 2019

Mr. Robert S. Marston
Telstar Instruments
1717 Solano Way, Unit 34
Concord, CA 94520

RE: NOTICE OF AWARD for the Palisades Sewer Lift Station Replacement Project,
Project Identification Number: 5514

Dear Mr. Marston:

You are hereby notified that your bid dated February 21, 2019 for the above-mentioned contract has been considered by the City of Calistoga City Council at their March 5, 2019 meeting. You are the successful bidder and are awarded a contract for the Palisades Sewer Lift Station Replacement Project in the amount of Seven Hundred Thirteen Thousand Three Hundred Seventy-One Dollars (\$713,371) for the Base Bid.

Two (2) copies of the proposed Contract Documents and one (1) CD with a PDF of the Drawings accompany this Notice of Award. A copy of the Faithful Performance Bond form and the Labor and Materials Bond form are also included for your use as well as a copy of the Certificate of Insurance and Endorsement (Workers Compensation) form and the Certificate of Insurance and Endorsement (Commercial General Liability) form.

You must comply with the following conditions within (15) days of the date you receive this Notice of Award.

1. Deliver to the Owner two (2) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the two (2) copies of the Contract security (Bonds) as specified in the Instructions to Bidders and General Conditions Section GC-3(B).
3. Deliver with the executed Contract Documents two (2) copies of the required insurance certificates as specified in the Instructions to Bidders and General Conditions Section GC-7(S).

Failure to comply with these conditions within the time specified will entitle the Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten (10) days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

A pre-construction meeting will be arranged. Derek Rayner, Deputy Public Works Director, will notify you of the date and time shortly. The pre-construction conference should be attended by the prime contractor's construction superintendent.

Please note that, as you establish subcontracts with your subcontractors, these must incorporate the City's Contract Documents by reference.

If you have any questions, please contact Louise Harrison, Adm. Services Technician, at (707) 942-2828. We look forward to working with your company on this project.

Sincerely,



Michael Kirn, Public Works Director

c: Irene Camacho-Werby, City Clerk
Derek Rayner, Deputy Public Works Director
Louise Harrison, Adm. Services Technician

Please acknowledge receipt of this Notice of Award and return to Public Works Dept.

I hereby acknowledge that we received this Notice of Award:

Signature

Date

Name

Title

CONTRACT FOR CONSTRUCTION

PALISADES SEWER LIFT STATION REPLACEMENT PROJECT

THIS CONTRACT FOR CONSTRUCTION is made and entered into this 6th day of March 2019 by and between the City of Calistoga, a municipal corporation, (hereinafter referred to as "City") and Telstar Instruments, a California corporation, located at 1717 Solano Way, Unit 34, Concord, CA 94520, (hereinafter referred to as "Contractor").

The City and the Contractor agree as follows:

- (1) **CONTRACT SUM:** The City agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum of Seven Hundred Thirteen Thousand Three Hundred Seventy-One dollars (\$713,371.00) is to be paid in accordance with the Contract Documents.
- (2) **COMPLIANCE WITH LAW:** The City is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.
- (3) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Contract for Construction are hereby made a part of and incorporated by reference into this Agreement: The Notice Inviting Bids, Information for Bidders, Contract Proposal, Faithful Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplemental Conditions, Special Provisions, Technical Specifications, State of California Department of Transportation Standard Plans and Specifications, 2015 edition, City of Santa Rosa Design and Construction Standards, most recent version, the Project Plans, duly issued addenda, duly Issued interpretations, approved change orders, preliminary construction schedule, Contractor's guarantee and bond, and supplemental agreements, certifications, and endorsements applicable to this work, with all modifications incorporated in said documents prior to receipt of the Contract Proposals. Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between City and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral.

This document may be amended only by written instrument, as provided in the General Conditions.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation.

A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

This Agreement is effective upon approval by the City Council, execution by the Contractor and concurrence by the Agency's designated representative.

CITY OF CALISTOGA

TELSTAR INSTRUMENTS,
a California Corporation

By: _____
Dylan Feik, City Manager

By: _____
(Authorized Representative of Contractor)

Dated: _____

Printed Name: Robert S. Marston

ATTEST:

Title: President

(Attach Acknowledgment for Authorized
Representative of Contractor)

Irene Camacho-Werby, City Clerk

Date: _____

(Contractor signatures must be notarized.)

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner") and Telstar Instruments, (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Palisades Sewer Lift Station Replacement Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond for the faithful performance of all terms and conditions of the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of Seven Hundred Thirteen Thousand Three Hundred Seventy-One and 00/100 Dollars (\$713,371.00), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Performance Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If Contractor timely performs each and every obligation under the Construction Contract, Surety and Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3. Surety's obligation under this Performance Bond shall arise after:

3.1 Owner has declared a Contractor Default and has notified Contractor and Surety at its address described in Paragraph 10 below that Owner has declared a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than seven days after receipt of such notice to discuss methods of performing the Construction Contract; and

3.2 Owner has agreed to pay the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, to Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the Construction Contract with Owner.

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by Owner and the contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Agreement Price, as calculated under the terms of the Construction Contract, incurred by Owner resulting from Contractor's Default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new Contractor and with reasonable promptness under the circumstances:

4.4.1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment thereof to Owner; or

4.4.2. Deny liability in whole or in part and notify Owner citing specific reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 within twenty days from receipt of the notice described in paragraph 3.1 (whether or not a conference has been held pursuant to paragraph 3.1), or such longer period upon which Owner and Surety may agree in writing, Surety shall be deemed to be in default on this Bond. If the Surety proceeds as provided in Subparagraph 4.4, and Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.

6. After Owner has declared a Contractor Default, and if Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Construction Contract, and the responsibilities of Owner to Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Performance Bond, but subject to commitment by Owner of the Balance of the Agreement Price to mitigation of costs and damages on the Construction Contract, Surety is obligated without duplication for:

6.1 The responsibilities of Contractor for correction of defective work, materials and equipment and completion of the Construction Contract;

6.2 Additional legal, design professional, construction management and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Construction Contract, and the Balance of the Agreement Price shall not be

reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators or successors.

8. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as an item of costs.

10. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address, or sent via fax machine to the facsimile number, shown on the signature page.

11. DEFINITIONS

11.1 Balance of the Agreement Price: The total amount payable by Owner to Contractor under the Construction Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Construction Contract.

11.2 Construction Contract: The agreement between the Owner and the Contractor identified on the first page of this bond, including all Contract Documents and changes thereto.

11.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

Note:

Signatures of those executing for Surety must be properly acknowledged by Notary. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner and Telstar Instruments (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Palisades Sewer Lift Station Replacement Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Claimants, as defined herein, in the penal sum of Seven Hundred Thirteen Thousand Three Hundred Seventy-One and 00/100 Dollars (\$713,371.00), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds Owner harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided Owner has promptly notified Contractor and Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to Owner,

stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

4.2.1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, as required by and conforming with Civil Code sections 3252 and 3091; and

4.2.2. Not having been paid within 30 days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the Owner, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

5.1 Send an answer to the Claimant, with a copy to Owner, within 20 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

5.2 Pay or arrange for payment of any undisputed amounts.

6. Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

7. Amounts owed by Owner to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By Contractor furnishing and Owner accepting this Payment Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work or the satisfaction of Owner's claims, including liquidated damages, under the Construction Contract.

8. Surety shall not be liable to Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. Owner shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

9. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

11. Notice to Surety, Owner or Contractor shall be mailed or delivered to the address shown on the signature page.

12. This Payment Bond has been furnished to comply with Civil Code sections 3247 through 3252. Any provision in this Payment Bond conflicting with those statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

14. DEFINITIONS

14.1 Claimant: An individual or entity identified in California Civil Code sections 3181 or 3248.

14.2 Construction Contract: The agreement between Owner and Contractor identified above, including all Contract Documents and changes thereto.

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

Note: Signatures of those executing for Surety must be properly acknowledged by Notary. The bond must be accompanied by a power of attorney from the Surety authorizing its agent to bind it to this bond.

**CERTIFICATE OF INSURANCE AND ENDORSEMENT
(WORKERS COMPENSATION)**

Contract with the City of Calistoga, 1232 Washington Street, Calistoga, California 94515, for the construction of:

PALISADES SEWER LIFT STATION REPLACEMENT PROJECT

THIS IS TO CERTIFY that the company named below has issued the worker's compensation and employer's liability policies, including a Waiver of Subrogation in favor of the City of Calistoga, listed below to the named insured, and they are in force at this time with the expiration date(s) as stated below. The Company will give at least thirty days (30) written notice by registered mail to the City prior to any material change or cancellation of said policies. The policies are so endorsed.

POLICY NUMBER

EXPIRATION DATE

LIMITS OF LIABILITY

Statutory Limits Under
the Laws of the State of
California

Insurance Company

Street Number

City and State

By:

(Authorized representative)

Telephone Number

Date

Principal

City and State

Telephone Number

Notice: No substitution or revision to the above certificate will be accepted. To be acceptable, insurers must be authorized to do business, and have an agent for service of process in California and have an A policy holder's rating and a financial rating of at least class VII in accordance with the most current Best's Ratings.

**CERTIFICATE OF INSURANCE AND ENDORSEMENT
(COMMERCIAL GENERAL LIABILITY)**

Contract with the CITY OF CALISTOGA, 1232 Washington Street, Calistoga, California 94515, for the construction of:

PALISADES SEWER LIFT STATION REPLACEMENT PROJECT

THIS IS TO CERTIFY that _____ (the Company)
(Name of Insurance Company)

has issued the policies listed below in conformance with the limits and requirements of said contract, and are in force at this time with expiration date(s) as stated below.

POLICY EXPIRATION		LIMITS OF LIABILITY	
<u>NUMBER</u>	<u>DATE</u>	<u>EACH OCCURRENCE</u>	<u>AGGREGATE</u>
		Bodily Injury	\$
		Property Damage	\$
		Bodily Injury and Property Damage	\$
		Combined Personal Injury	\$
		Bodily Injury (Each Person)	\$
		Bodily Injury (Each Occurrence)	\$

The following types of coverage are included in said policies (indicate by 'X' in space):

(a) GENERAL LIABILITY:

Commercial Broad Form	Yes ____	No ____
Premises-Operations	Yes ____	No ____
Explosion and Collapse Hazard.	Yes ____	No ____
Underground Hazard.	Yes ____	No ____
Products/Completed Operations Hazard.	Yes ____	No ____
Contractual Insurance.	Yes ____	No ____
Broad Form Property Damage.	Yes ____	No ____
Independent Contractors.	Yes ____	No ____
Personal Injury.	Yes ____	No ____

(b) AUTOMOBILE:

Comprehensive Form.	Yes ____	No ____
--------------------------	----------	---------

Owned. Yes ____ No ____
Hired. Yes ____ No ____
Non-Owned. Yes ____ No ____

Attach original copy of policy to this certificate.

ENDORSEMENT

1. The **City of Calistoga**, its officers, officials, directors, employees, volunteers, and Design Engineer are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the **City of Calistoga**, its officers, officials, directors, employees, volunteers, and Design Engineer. Any insurance or self-insurance maintained by its officers, officials, directors, employees, volunteers, and Design Engineer shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or reduced by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the **City of Calistoga**.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

This endorsement does not increase the Company's total limits of liability.

Insurance Company

Street Number

City and State

Insurance Company Agent for
service of process in California

Name

Street Number

City and State

Telephone Number

Insurance Company

Street Number

City and State

By:
(Authorized Representative)

Date

Agency

Street Number

City and State

Telephone Number

**AMENDMENT NO.13 OF
NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT AGREEMENT NO. 1926**

(WATER SUPPLY CONTRACT WITH THE CITY OF CALISTOGA)

THIS AMENDMENT NO. 13 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 1926, hereinafter referred to as "Amendment No. 13," is made as of this 19th day of March, 2019, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as "Agency," and the CITY OF CALISTOGA, hereinafter referred to as "City."

RECITALS

WHEREAS, Agency is party to a water supply agreement ("State Water Supply Agreement") with the State of California, initially approved on December 19, 1963, and subsequently amended by the parties thereto, that specifies the amount of water available to Agency for disbursement to its Member Units (defined by Agreement paragraph 1(f)) in any given year and a number of component charges for water allocated and delivered through the North Bay Aqueduct; and

WHEREAS, City and Agency entered into the "contract for Water Supply from North Bay Aqueduct between Napa County Flood Control and Water Conservation District and City of Calistoga (Agreement No. 1926, hereinafter "Contract") as of June 15, 1982, subsequently modified by Amendment No. 1 as of December 21, 1982, and by Amendment No. 2 as of December 15, 1998, and by Amendment No. 3 as of September 19, 2000, and by Amendment No. 4 as of December 7, 2004, and by Amendment No. 5 as of December 7, 2004, and by Amendment No. 6 as of November 7, 2006, and by Amendment No. 7 as of April 15, 2008, and by Amendment No. 8 as of August 4, 2009, and by Amendment No. 9 as of August 4, 2009, and by Amendment No. 10 as of October 6, 2009, and by Amendment No. 11 as of June 18, 2013 and by Amendment No. 12 as of October 15, 2013, under which Agency disburses to City as a Member Unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

WHEREAS, the Contract specifies the terms by which the Agency will deliver water (that is available to the Agency through the State Water Supply Agreement) to the City (as a "Member Unit" as defined by Contract Section 1(f)); and

WHEREAS, on October 21, 2014 the City and Agency approved an Agreement in Principle Concerning Extension of the State Water Project Water Supply Contracts with the State of California Department of Water Resources as approved by the Member Units subject to drafting of a final Amendment No. 25 to the State Water Supply Agreement; and

WHEREAS, Amendment No. 13 will improve financial oversight of the State Water Project Operations and Capital Improvements and extend the terms of the Contract through December 31, 2085, or the period ending with the latest maturity of any bond issue used to finance the construction costs of Project Facilities; and

WHEREAS, the parties believe it is in the best interest of the Agency and the City to approve and authorize the Agency to sign Amendment No. 25 to the State Water Supply Agreement and to amend the Contract accordingly.

TERMS

NOW, THEREFORE, IT IS MUTUALLY AGREED by Agency and City that the Contract shall be amended, pursuant to this Amendment No.13 as follows:

1. The City acknowledges and accepts that the Agency and the State of California intend to execute Amendment No. 25 to the State Water Supply Agreement. The terms of Amendment No. 25 will include the following amendments to the State Water Supply Agreement:
 - a. Articles 22 through 29, 50 and 51 will be deleted in their entirety, and amended as shown on Exhibit A, attached hereto and incorporated herein by reference.
 - b. Article 61 will be added as shown on Exhibit B, attached hereto and incorporated herein by reference.
 - c. Appendix B is added as shown on Exhibit C, attached hereto and incorporated herein by reference.
 - d. Unless the context requires otherwise, terms used in Amendment No. 25 shall have the same meaning as in the State Water Supply Agreement.
2. Upon the effective date of Amendment No. 25 to the State Water Supply Agreement, all references in the Contract to the "State contract" (as defined by Contract Section 1(a)) shall refer to the State Water Supply Agreement as amended by Amendment No. 25.
3. This Amendment No. 13 shall become effective when Amendment No. 25 to the State Water Supply Agreement becomes effective.
4. Except as provided in this Amendment No. 13, all of the terms and provisions of the Contract shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 13 as of the date first above written.

CITY OF CALISTOGA

By 
DYLAN FEIK
City Manager

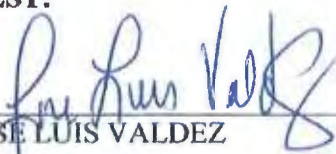
**NAPA COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT**

By 
BRAD WAGENKNECHT
Chair of the Board

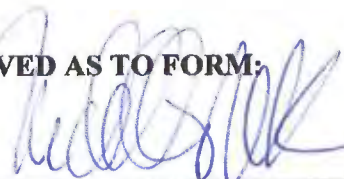
ATTEST:

By 
IRENE CAMACHO-WERBY
City Clerk

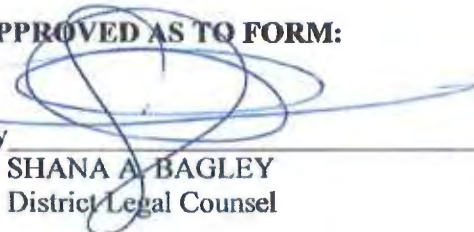
ATTEST:

By 
JOSE LUIS VALDEZ
District Secretary

APPROVED AS TO FORM:

By 
MICHELLE KENYON
City Attorney

APPROVED AS TO FORM:

By 
SHANA A. BAGLEY
District Legal Counsel

COUNTERSIGNED:

By 
GLORIA LEON
Administrative Services Director

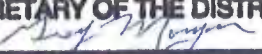
APPROVED 3/19/19
NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
SECRETARY OF THE DISTRICT BOARD
BY:  Deputy

EXHIBIT A

22. DELTA WATER CHARGE

The payments to be made by each Contractor shall include an annual charge designated as the Delta Water Charge, which shall be separately calculated and stated for costs Incurred prior to the Billing Transition Date and costs Incurred on or after the Billing Transition Date.

(a) **Delta Water Charge for Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) shall apply only to costs Incurred prior to the Billing Transition Date.

(1) *Recovery of Costs of Project Conservation Facilities.* The Delta Water Charge for costs Incurred prior to the Billing Transition Date, together with the total revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities, shall return to the State during the Project Repayment Period all costs of the Project Conservation Facilities Incurred prior to the Billing Transition Date, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivisions (c)(1) through (c)(3) of this article.

(2) *Components of Charge.* For each Contractor receiving Project Water in any year through December 31, 1969, the Delta Water Charge shall be the product of \$3.50 and the Contractor's Annual Table A Amount for the respective year. For each Contractor receiving Project Water in the year 1970, the Delta Water Charge shall be the product of \$6.65 and the Contractor's Annual Table A Amount for that year. The \$6.65 rate for the year 1970 shall consist of a capital component of \$5.04 and a minimum operation, maintenance, power and replacement component of \$1.61. For each Contractor receiving Project Water in the year 1971, the Delta Water Charge shall be the product of \$7.24 and the Contractor's Annual Table A Amount for that year. The \$7.24 rate for the year 1971 shall consist of a capital component of \$5.44 and a minimum operation, maintenance, power and replacement component of \$1.80.

After December 31, 1971, the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall consist and be the sum of the following components as these are computed in accordance with subdivisions (a)(3) and (a)(4) of this article: a capital component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(3) *Charge Components Expressed as Rates.* The Capital Cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water Charge for costs Incurred prior to the Billing Transition Date, together with that portion of the revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the Project Repayment Period, respectively, the following categories of the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivisions (c)(1) through (c)(3) of this article:

(A) Capital Costs;

(B) operation, maintenance, power, and replacement costs Incurred irrespective of the amount of Project Water delivered to the Contractors;
and

(C) operation, maintenance, power, and replacement costs Incurred in an amount which is dependent upon and varies with the amount of Project Water delivered to the Contractors;

provided that each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities. Each component of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall be computed on the basis of a rate which, when charged during the Project Repayment Period for each acre-foot of the sum of the yearly totals of Annual Table A Amounts of all Contractors, will be sufficient, together with that portion of the revenues derived prior to the Billing Transition Date from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the Project Repayment Period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$\frac{(c_1 - r_1)(1 + i)^{-1} + (c_2 - r_2)(1 + i)^{-2} + \cdots + (c_n - r_n)(1 + i)^{-n}}{e_1(1 + i)^{-1} + e_2(1 + i)^{-2} + \cdots + e_n(1 + i)^{-n}}$$

Where:

i = The Project Interest Rate.

- c = The total costs included in the respective category of costs and Incurred during the respective year of the Project Repayment Period (prior to the Billing Transition Date).
- r = That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category and Incurred during the respective year of the Project Repayment Period (prior to the Billing Transition Date).

1, 2, and n
appearing
below

- c and r = The respective year of the Project Repayment Period during which the costs included in the respective category are Incurred, n being the last year of the Project Repayment Period.
- e = With respect to the Capital Cost and minimum operation, maintenance, power, and replacement components, the total of Annual Table A Amounts of all Contractors for the respective year of the Project Repayment Period.
- e = With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of Project Water delivered to all Contractors for the respective year of the expired portion of the Project Repayment Period, together with the total of Annual Table A Amounts of all Contractors for the respective year of the unexpired portion of the Project Repayment Period.

1, 2, and n
appearing
below

- e = The respective year of the Project Repayment Period in which the Annual Table A Amounts or Project Water deliveries occur, n being the last year of the Project Repayment Period.

n used
as an

- exponent = The number of years in the Project Repayment Period.

(4) *Determination of Charge Components.* The Capital Cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall be the product of the appropriate rate computed under subdivision (a)(3) of this article and the Contractor's Annual Table A Amount for the respective year. The

variable operation, maintenance, and power component of the charge shall be the product of the appropriate rate computed under subdivision (a)(3) of this article and the number of acre-feet of Project Water delivered to the Contractor during the respective year; *provided*, that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, such variable component during such period shall be the product of such rate per acre-foot and the sum of the number of acre-feet of Project Water delivered to the Contractor and the number of acre-feet wasted.

(5) *Redetermination of Rates.* The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (a)(4) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (a)(3) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivisions (a)(3) and (4) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred to construct the Project Conservation Facilities described in subdivisions (c)(1) through (c)(3) of this article, Annual Table A Amounts, deliveries of Project Water, Project Interest Rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining such rates for all preceding years, and actual costs Incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(6) *Water System Facility Revenue Bond Charges.* Notwithstanding provisions of Article 22(a)(1) through (5), the capital and the minimum operation, maintenance, power and replacement component of the Delta Water Charge for costs Incurred prior to the Billing Transition Date shall include an annual charge to recover the Agency's share of the portion of the Water System Facility Revenue Bond Financing Costs allocable to Project Conservation Facilities for Capital Costs Incurred prior to the Billing Transition Date. Charges to the Agency for these costs shall be calculated in accordance with Article 50(a).

(b) **Delta Water Charge for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) of this article shall apply only to costs Incurred on or after the Billing Transition Date.

(1) *Components of the Delta Water Charge for Costs Incurred On or After the Billing Transition Date.* The Delta Water Charge for costs Incurred on or after the Billing Transition Date shall consist of the following components as these are computed in accordance with subdivisions (b)(2) through (b)(4) of this article:

(A) Capital component,

(B) Minimum operation, maintenance, power, and replacement component, and

(C) Variable operation, maintenance, and power component.

(2) *Determination of Charge Components.* These three components of the Delta Water Charge for each calendar year, together with that portion of the revenues derived during such calendar year from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during such calendar year the following categories, respectively, of the costs allocated pursuant to subdivisions (c)(1) through (c)(3) of this article to the purpose of water conservation in, above, and below the Delta.

(A) the capital component consisting of Capital Costs of Project Conservation Facilities to be recovered during such calendar year as and to the extent provided in subdivision (b)(3) of this article,

(B) the minimum operation, maintenance, power, and replacement component consisting of operation, maintenance, power, replacement costs of Project Conservation Facilities Incurred during such calendar year irrespective of the amount of Project Water delivered to the Contractors, and

(C) the variable operation, maintenance, and power component consisting of operation, maintenance, and power costs of Project Conservation Facilities Incurred during such calendar year in an amount

which is dependent upon and varies with the amount of Project Water delivered to the Contractors;

provided that each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities; and *provided further* that revenues generated in connection with the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities shall not reduce or be credited against charges pursuant to subdivision (b)(3)(D)(i) of this article (charges for Water System Facility Revenue Bond Financing Costs).

(3) *Categories of Capital Costs.*

(A) The amount of the capital component of the Delta Water Charge shall be determined in three steps as follows:

(i) first, an allocation to the **Agency** of Capital Costs of Project Conservation Facilities as provided in subdivisions (c)(1) through (c)(3) of this article,

(ii) second, a determination of the type and source of payment of each Capital Cost in accordance with subdivision (b)(3)(B) of this article, and

(iii) third, a computation of the annual payment to be made by the **Agency** as provided in subdivision (b)(3)(C) and (b)(3)(D) of this article.

(B) Annual Capital Costs of Project Conservation Facilities shall be divided into five categories of type and source of payment:

(i) Project Conservation Facility Capital Costs paid with the proceeds of Water System Facility Revenue Bonds,

(ii) Project Conservation Facility Capital Costs to be paid with the proceeds of Bonds issued under the Burns-Porter Bond Act,

(iii) Project Conservation Facility Capital Costs to be paid with amounts in the SWRDS Reinvestment Account,

(iv) Project Conservation Facility Capital Costs to be paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and

(v) Project Conservation Facility Capital Costs prepaid by the Agency.

(C) The projected amounts of Project Conservation Facility Capital Costs in each such category to be allocated annually to the Agency shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (c)(1) through (c)(3) and (b)(6) of this article, which principles and procedures shall be controlling as to allocations of Capital Costs to the Agency; *provided that* these amounts shall be subject to redetermination by the State in accordance with Article 28. Such projected amounts will be set forth in Table B by the State.

TABLE B
PROJECTED ALLOCATIONS TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
OF PROJECT CONSERVATION FACILITY CAPITAL COSTS INCURRED ON OR
AFTER THE BILLING TRANSITION DATE

Year	Projected Allocations in Thousands of Dollars				
	Costs to be Paid with Proceeds of Water System Facility Revenue Bonds	Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act	Costs to be Paid with Amounts in the SWRDS Reinvestment Account	Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial	Costs Prepaid by the Agency
1*					
2					
3					

* Year commencing with the Billing Transition Date.

(D) The annual amount to be paid by the Agency under the capital component of the Delta Water Charge for each calendar year for costs Incurred on or after the Billing Transition Date shall consist of the following categories:

(i) Water System Facility Revenue Bonds: a charge determined in accordance with Article 50(b) to recover Water System Facility Revenue Bond Financing Costs Incurred during such calendar year that relate to the financing of Project Conservation Facilities,

(ii) Burns-Porter Act Bonds: a charge to recover the amount to be paid by the State of California during such calendar year in accordance with the Burns-Porter Bond Act for the principal of and interest on bonds issued under the Burns-Porter Bond Act on or after the Billing Transition Date for Project Conservation Facility Capital Costs,

(iii) SWRDS Reinvestment Account: a charge determined in accordance with subdivision (b)(5) of Article 61 to amortize Project Conservation Facility Capital Costs Incurred during prior calendar years (but not prior to the Billing Transition Date) that have been paid with amounts from the SWRDS Reinvestment Account, and

(iv) Capital Assets with Short Economic Life or Costs of which are Not Substantial: a charge to recover the Capital Costs to be Incurred during such calendar year of Project Conservation Facility assets with a short Economic Useful Life or the costs of which are not substantial as determined by the State and any such Capital Costs Incurred but not charged in the prior two calendar years.

(E) The projected amounts of each category of charges to be paid annually by the Agency under this capital component shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision (b), which principles and procedures shall be controlling as to allocations of types of capital component charges to the Agency; *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table C by the State.

TABLE C
PROJECTED CHARGES TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
UNDER THE CAPITAL COMPONENT OF THE DELTA WATER CHARGE FOR
COSTS INCURRED ON OR AFTER THE BILLING TRANSITION DATE

Year	Projected Charges in Thousands of Dollars			
	Costs to be Paid with Proceeds of Water System Facility Revenue Bonds	Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act	Costs to be Paid with Amounts in the SWRDS Reinvestment Account	Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial
1				
2				
3				

* Year commencing with the Billing Transition Date.

(4) *Minimum Operation, Maintenance, Power and Replacement Charge – Determination; Repayment Table.*

The amount to be paid each year by the Agency under the minimum operation, maintenance, power, and replacement component of the Delta Water Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (b)(6)(A) of this article; *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table D by the State.

TABLE D
DELTA WATER CHARGE -- ESTIMATED MINIMUM OPERATION, MAINTENANCE,
POWER AND REPLACEMENT COMPONENT FOR COSTS INCURRED ON OR
AFTER THE BILLING TRANSITION DATE
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Total Annual Payment by Agency
1*	
2	
3	
4	

* Year commencing with the Billing Transition Date.

(5) *Variable Operation, Maintenance and Power Charge–
Determination; Repayment Table.*

The amount to be paid each year by the Agency under the variable operation, maintenance and power component of the Delta Water Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in subdivision (b)(6)(B) of this article; *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table E by the State.

TABLE E
DELTA WATER CHARGE -- ESTIMATED VARIABLE OPERATION, MAINTENANCE
AND POWER COMPONENT FOR COSTS INCURRED ON OR AFTER THE BILLING
TRANSITION DATE
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Total Annual Payment by Agency
1*	
2	
3	
4	

* Year commencing with the Billing Transition Date.

(6) *Allocation of Charges to the Agency.*

(A) The capital and minimum operation, maintenance, and power components of the Delta Water Charge for each calendar year for costs Incurred on or after the Billing Transition Date shall be allocated to the Agency in proportion to the ratio of the Agency's Annual Table A Amount for such calendar year to the total of the Annual Table A Amounts for all Contractors for such calendar year.

(B) The variable operation, maintenance, and power component of the Delta Water Charge for each calendar year for costs Incurred on or after the Billing Transition Date shall be allocated to the Agency in proportion to the ratio of the number of acre-feet of Project Water delivered to the Agency during such calendar year to the number of acre-feet of Project Water delivered to all Contractors during such calendar year; *provided* that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, such variable component during such period shall be calculated as if the number of acre-feet wasted had been delivered.

(7) *Delta Water Charge -- Repayment Schedule.*

The amounts to be paid by the Agency for each year on or after the Billing Transition Date under the Capital Cost component, minimum operation, maintenance, power and replacement component and the variable operation, maintenance, and power component of the Delta Water Charge shall be set forth by the State in Table F, which Table F shall constitute a summation of Tables C, D, and E; *provided* that each of the amounts set forth in Table F shall be subject to redetermination by the State in accordance with Article 28; *provided further* that the principles and procedures set forth in this Article 22 shall be controlling

as to such amounts. Such amounts shall be paid by the Agency in accordance with the provisions of Article 29.

TABLE F
REPAYMENT SCHEDULE -- DELTA WATER CHARGE FOR COSTS INCURRED ON
OR AFTER THE BILLING TRANSITION DATE
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Capital Cost Component	Minimum Component	Variable Component	Total
1*				
2				
3				
4				

* Year commencing with the Billing Transition Date.

(c) **Provisions Applicable to the Delta Water Charge for Costs Incurred Both Before and On or After the Billing Transition Date.** The provisions of this subdivision (c) shall be applicable to costs Incurred both prior to and on or after the Billing Transition Date.

(1) *Allocation of Costs to Project Purposes.*

(A) Prior to the time that Additional Project Conservation Facilities or Supplemental Conservation Facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those Initial Project Conservation Facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following Project Facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Harvey O. Banks Delta Pumping Plant), the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: *provided*, that all of the actual and projected costs properly chargeable to the generation and transmission of electrical energy in connection with operation of Project Conservation Facilities shall be allocated to the purpose of water conservation in, above, and below the Delta; *provided further*, that allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.

(B) Wherever reference is made, in connection with the computation, determination, or payment of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities that are reimbursable by the Contractors as determined by the State.

(C) The State, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the State, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs. Such recreational purposes include, but are not limited to, those recreational pursuits generally associated with the out-of-doors, such as camping, picnicking, fishing, hunting, water contact sports, boating, and sightseeing, and the associated facilities of campgrounds, picnic areas, water and sanitary facilities, parking areas, viewpoints, boat launching ramps, and any others necessary to make project land and water areas available for use by the public. In administering this Contract "development of public recreation" shall include recreation capital and operation and maintenance.

(2) *Additional Conservation Facilities.* Commencing in the year in which the State first awards a major construction contract for construction of a major feature of Additional Project Conservation Facilities, or first commences payments under a contract with a federal agency in the event a major feature of Additional Project Conservation Facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all projected costs of such feature of the Additional Project Conservation Facilities; *provided*, that if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State; *provided, further*, that all costs of Additional Project Conservation Facilities Incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are Incurred.

(3) *Supplemental Conservation Facilities.* Upon the construction of the Supplemental Conservation Facilities, the Delta Water Charge shall be paid by

all Contractors for Supplemental Water, as well as by Contractors for Project Water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with operation of Project Conservation Facilities and Supplemental Conservation Facilities, shall return to the State, in addition to those costs of the Project Conservation Facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (c)(1) of this article, all costs of such Supplemental Conservation Facilities, including capital, operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any Supplemental Conservation Facilities, or first commences payments under a contract with a federal agency in the event a major feature of Supplemental Conservation Facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations made pursuant to subdivision (c)(1) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in such subdivision (c)(1), of all projected costs of such feature of the Supplemental Conservation Facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the Annual Table A Amounts under all contracts for Supplemental Water. If the repayment period of any bonds sold to construct Supplemental Conservation Facilities or the repayment period under any agreement with a federal agency for repayment of the costs of Supplemental Conservation Facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate; *provided*, that if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(4) *Local Projects.* The determination of the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (a) and (b) above, for all Additional Project Conservation Facilities as defined in Article 1(a). In the event a Local Project as defined in Article 1(a)(2) will, pursuant to written agreement between the State and the sponsoring Contractor, be considered and treated as an Additional Project Conservation Facility for less than the estimated life of the facility, the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an Additional Project Conservation Facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the

Delta Water Charge unless and until the written agreement required by Article 1(a) has been entered into.

(5) *Water Purchased By the State.* In calculating the Delta Water Charge under subdivisions (a) and (b) of this article, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State Incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as Project Water.

(6) *Replacement Cost Treatment.* Replacement costs of Project Conservation Facilities shall be treated as either Capital Costs or as minimum operation, maintenance, power, and replacement costs, as determined by the State considering the Economic Useful Life of the asset being replaced and other relevant factors.

23. TRANSPORTATION CHARGE.

The payments to be made by each Contractor shall include an annual charge designated as the Transportation Charge, which shall be separately stated and calculated for costs Incurred prior to the Billing Transition Date and costs Incurred on or after the Billing Transition Date.

(a) **Transportation Charge for Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) and Articles 24(a) and (c), 25 and 26 shall apply to costs Incurred prior to the Billing Transition Date.

(1) *Recovery of Costs of Project Transportation Facilities.* The Transportation Charge for costs Incurred prior to the Billing Transition Date shall return to the State during the Project Repayment Period such costs of all Project Transportation Facilities necessary to deliver Project Water to the Contractor and which are allocated to the Contractor in accordance with the cost allocation principles and procedures hereinafter set forth.

(2) *Components of Transportation Charge for Costs Incurred Prior to the Billing Transition Date.* The Transportation Charge for costs Incurred Prior to the Billing Transition Date shall consist of a capital component; a minimum operation, maintenance, power, and replacement component; and a variable operation, maintenance and power component, as these components are defined in and determined under Articles 24(a) and (c), 25, and 26, respectively.

(b) **Transportation Charge for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) and Articles 24(b) and (c), 25 and 26 shall apply to costs Incurred on or after the Billing Transition Date.

(1) *Recovery of Costs of Project Transportation Facilities.* The Transportation Charge for costs Incurred on or after the Billing Transition Date shall return to the State during each such calendar year all costs which are Incurred on or after the Billing Transition Date of all Project Transportation Facilities necessary to deliver Project Water to the Agency and which are allocated to the Agency in accordance with the cost allocation principles and procedures hereinafter set forth.

(2) *Components of Transportation Charge.* The Transportation Charge for costs Incurred on or after the Billing Transition Date shall consist of a capital component; a minimum operation, maintenance, and power component; and a variable operation, maintenance, and power component, as these components are defined in and determined under Articles 24(b) and (c), 25, and 26, respectively.

(c) **Segregation of Aqueduct Reaches for All Transportation Charge Purposes.** For the purpose of allocations of costs among Contractors pursuant to

subdivisions (a) and (b) of this article, and Articles 24, 25 and 26, the Project Transportation Facilities shall be segregated into such aqueduct reaches as are determined by the State to be necessary for such allocations of costs. Subject to such modifications as are determined by the State to be required by reason of any request furnished by the Agency to the State pursuant to Article 17(a) of this contract, or by reason of contracts entered into by the State with other Contractors, the aqueduct reaches of the Project Transportation Facilities, a portion of the costs of which may be allocated to the Agency, are established as provided in Table G; *provided* that those costs of the aqueduct reaches from the Delta through the outlet of San Luis Reservoir which are allocated to the purpose of water conservation in, above, and below the Delta for the purpose of determining the Delta Water Charge, as hereinbefore set forth, shall not be included in the Transportation Charge.

TABLE G
PROJECT TRANSPORTATION FACILITIES NECESSARY TO DELIVER WATER TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Aqueduct Reach	Major Features of Reach
Barker Slough thru Fairfield/ Vacaville Turnout	Intake Canal Fish Protective Facilities Barker Slough Pumping Plant Aqueduct
Fairfield/Vacaville Turnout to Cordelia Forebay	Aqueduct
Cordelia Forebay thru Napa Turnout Reservoir	Cordelia Forebay (Napa portion) Cordelia Pumping Plant (Napa portion) Aqueduct Interim Pumping Plant Interim Conveyance Facilities

(This table was labeled Table I in original contract provisions)

(d) Provisions Applicable to the Transportation Charge for Costs Incurred Both Before and On or After the Billing Transition Date.

(1) Wherever reference is made, in connection with the computation, determination, or payment of the Transportation Charge, to the allocation or payment of costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the Contractors as determined by the State.

(2) The State, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the State, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of that water and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs. Such recreational purposes include, but are not limited to, those recreational pursuits generally associated with the out-of-doors, such as camping, picnicking, fishing, hunting, water contact sports, boating, and sightseeing, and the associated facilities of campgrounds, picnic areas, water and sanitary facilities, parking areas, viewpoints, boat launching ramps, and any others necessary to make project land and water areas available for use by the public. In administering this Contract "development of public recreation" shall include recreation capital and operation and maintenance.

24. TRANSPORTATION CHARGE -- CAPITAL COMPONENTS.

(a) **Transportation Charge Capital Component for Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) shall apply only to Capital Costs Incurred prior to the Billing Transition Date.

(1) *Recovery of Capital Costs of Project Transportation Facilities Incurred Prior to the Billing Transition Date.* The amount of the capital component of the Transportation Charge for Capital Costs Incurred prior to the Billing Transition Date shall be determined in two steps as follows:

(A) first, an allocation of such costs to the Contractor in accordance with subdivision (a)(2) of this article, and

(B) second, a computation of annual payments to be made by the Contractor of such allocated costs and interest thereon, computed at the Project Interest Rate in accordance with subdivision (a)(3) of this article.

(2) *Allocation of Capital Costs of Project Transportation Facilities Incurred Prior to the Billing Transition Date.* The total amount of Capital Costs Incurred prior to the Billing Transition Date of each aqueduct reach to be returned to the State shall be allocated among all Contractors entitled to delivery of Project Water from or through such reach by the proportionate use of facilities method of cost allocation and in accordance with Article 23(c) and subdivision (c)(1) of this article.

The projected amounts of Capital Costs to be allocated annually to the Agency under the capital component of the Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision (a) and subdivision (c)(1) of this article, which principles and procedures shall be controlling as to allocations of Capital Costs to the Agency. Such amounts will be set forth in Table H by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a), *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28.

TABLE H
PROJECTED ALLOCATIONS OF CAPITAL COSTS INCURRED PRIOR TO THE
BILLING TRANSITION DATE OF
PROJECT TRANSPORTATION FACILITIES TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Projected Allocation in Thousands of Dollars
1*	
2	
3	
4	

* Year in which State commences construction of Project Transportation Facilities.
(This table was labeled Table C in original contract provisions)

(3) *Determination of Capital Component of Transportation Charge for Costs Incurred Prior to the Billing Transition Date.* The Agency's annual payment of its allocated Capital Costs Incurred prior to the Billing Transition Date and interest thereon, computed at the Project Interest Rate and compounded annually, shall be determined in accordance with a repayment schedule established by the State and determined in accordance with the principles set forth in (A), (B), and (C) below, which principles shall be controlling as to the Agency's payment of its allocated Capital Costs. The Agency's repayment schedule will be set forth in Table I by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that the amounts set forth in Table I shall be subject to redetermination by the State, pursuant to Article 28.

(A) The Agency's annual payment shall be the sum of the amounts due from the Agency on the Agency's allocated Capital Costs for the then current year and for each previous year where each such amount will pay, in not more than fifty (50) equal annual installments of principal and interest, the Agency's allocated Capital Costs for the respective year and interest thereon, computed at the Project Interest Rate and compounded annually.

(B) The Agency may make payments at a more rapid rate if approved by the State.

(C) Such annual Transportation Charge payments shall cease when all allocated Capital Costs and interest thereon, computed at the Project Interest Rate and compounded annually, are repaid.

TABLE I
TRANSPORTATION CHARGE FOR COSTS INCURRED PRIOR TO THE BILLING
TRANSITION DATE -- CAPITAL COST COMPONENT
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
(In Thousands of Dollars)

Year	Annual Payment of Principal	Annual Interest Payment	Total Annual Payment by Agency
1*			
2**			
3			
4			

* Year in which State commences construction of Project Transportation Facilities.

** Year of first payment.

(This table was labeled Table D in original contract provisions)

(4) Notwithstanding provisions of subdivisions 24(a)(1) through (a)(3) of this article, the capital component of the Transportation Charge for costs Incurred prior to the Billing Transition Date shall include an annual charge to recover the Agency's share of the portion of Water System Facility Revenue Bond Financing Costs allocable to Project Transportation Facilities. Charges to the Agency for these costs shall be calculated in accordance with Article 50(a).

(b) Transportation Charge Capital Component for Costs Incurred On or After the Billing Transition Date. The provisions of this subdivision (b) shall apply only to Capital Costs Incurred on or after the Billing Transition Date.

(1) The amount of the capital component of the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be determined in three steps as follows:

(A) first, an allocation of Capital Costs to the Contractor as provided in subdivision (b)(2) of this article,

(B) second, a determination of the type and source of payment of each Capital Cost as provided in subdivision (b)(3) of this article, and

(C) third, a computation of the annual payment to be made by the Contractor as provided in subdivision (b)(4) and (b)(5) of this article.

(2) The total amount of Capital Costs of each aqueduct reach to be returned to the State under the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be allocated among all Contractors entitled to delivery of Project Water from or through the reach by the proportionate use of facilities method of cost allocation and in accordance with Article 23(c) and subdivision (c)(1) of this article.

(3) Annual Capital Costs of Project Transportation Facilities shall be divided into five categories of type and source of payment:

(A) Project Transportation Facility Capital Costs paid with the proceeds of Water System Facility Revenue Bonds,

(B) Project Transportation Facility Capital Costs paid with the proceeds of bonds issued under the Burns-Porter Bond Act,

(C) Project Transportation Facility Capital Costs paid with amounts in the SWRDS Reinvestment Account,

(D) Project Transportation Facility Capital Costs paid annually for assets that will have a short Economic Useful Life or the costs of which are not substantial, and

(E) Project Transportation Facility Capital Costs prepaid by the Agency.

The projected amounts of Project Transportation Facility Capital Costs of each type to be allocated annually to the Agency shall be determined by the State in accordance with the cost allocation principles and procedures set forth in Article 23(c)(1) through (c)(3) and this subdivision (b)(3), which principles and procedures shall be controlling as to allocations of each type of Capital Costs to the Agency; *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such projected amounts will be set forth in Table J by the State.

TABLE J
PROJECTED ALLOCATIONS TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
OF PROJECT TRANSPORTATION FACILITY CAPITAL COSTS INCURRED ON OR
AFTER THE BILLING TRANSITION DATE

Year	Allocations in Thousands of Dollars				
	Costs to be Paid with Proceeds of Water System Facility Revenue Bonds	Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act	Costs to be Paid with Amounts in the SWRDS Reinvestment Account	Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial	Costs Prepaid by the Agency
1*					
2					
3					

* Year commencing with the Billing Transition Date

(4) The capital component of the Transportation Charge for a calendar year for costs Incurred on or after the Billing Transition Date shall consist of the following to the extent the related Capital Costs are allocated to the Agency:

(A) Water System Facility Revenue Bond: a charge determined in accordance with Article 50(b) to recover Water System Facility Revenue Bond Financing Costs Incurred during such calendar year that relate to the financing of Water System Facilities that are Project Transportation Facilities,

(B) Burns-Porter Act Bonds: a charge to recover the amount to be paid by the State of California during such calendar year in accordance with the Burns-Porter Bond Act for the principal of and interest on bonds issued under the Burns-Porter Bond Act on or after the Billing Transition Date for Project Transportation Facility Capital Costs,

(C) SWRDS Reinvestment Account: a charge determined in accordance with subdivision (b)(5) of Article 61 to amortize Project Transportation Facility Capital Costs Incurred during prior calendar years

(but not prior to the Billing Transition Date) that have been paid with amounts from the SWRDS Reinvestment Account, and

(D) Capital Assets with Short Economic Life or Costs of which are Not Substantial: a charge to recover the Capital Costs to be Incurred during such calendar year of Project Transportation Facility assets with a short Economic Useful Life or the costs of which are not substantial as determined by the State and any such Capital Costs Incurred but not charged in the prior two calendar years,

(5) *Projected Charges.* The projected amounts of the charges to be allocated annually to the Agency under the capital component of the Transportation Charge for costs Incurred on or after the Billing Transition Date shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this Article, which principles and procedures shall be controlling as to allocations of capital component charges to the Agency; *provided* that these amounts shall be subject to redetermination by the State in accordance with Article 28. Such amounts are projected to be as set forth in Table K by the State.

**TABLE K
PROJECTED CHARGES UNDER THE CAPITAL COMPONENT
OF THE TRANSPORTATION CHARGE FOR COSTS INCURRED ON OR AFTER THE
BILLING TRANSITION DATE TO
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

Year	Projected Charges in Thousands of Dollars			
	Costs to be Paid with Proceeds of Water System Facility Revenue Bonds	Costs to be Paid with the Proceeds of Bonds issued under the Burns-Porter Bond Act	Costs to be Paid with Amounts in the SWRDS Reinvestment Account	Costs to be Paid Annually for Assets That Will Have a Short Economic Useful Life or the Costs of which are Not Substantial
1*				
2				
3				

* Year commencing with the Billing Transition Date.

(c) **Provisions Applicable to the Transportation Charge For Costs Incurred Both Prior To and On or After the Billing Transition Date.** The provisions of this subdivision (c) shall be applicable to Capital Costs Incurred both prior to and on or after the Billing Transition Date.

(1) *Proportionate Use Factors.* The measure of the proportionate use by each Contractor of each reach shall be the average of the following two ratios:

(A) the ratio of the Contractor's Maximum Annual Table A Amount to be delivered from or through the reach to the total of the Maximum Annual Table A Amounts of all Contractors to be delivered from or through the reach from the year in which charges are to be paid through the end of the Project Repayment Period, and

(B) the ratio of the capacity provided in the reach for the transport and delivery of Project Water to the Contractor to the total capacity provided in the reach for the transport and delivery of Project Water to all Contractors served from or through the reach from the year in which charges are to be paid through the end of the Project Repayment Period.

Allocations of Capital Costs to the Agency pursuant hereto shall be on the basis of relevant values which will be set forth in Table L by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach of the Project Transportation Facilities for the transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that these values shall be subject to redetermination by the State in accordance with Article 28; *provided further* that the principles and procedures set forth in this subdivision shall be controlling as to allocations of Capital Costs to the Agency. Proportionate use of facilities factors for prior years shall not be adjusted by the State in response to changes or transfers of Table A Amounts among Contractors unless otherwise agreed by the State and the parties to the transfer and unless there is no impact on past charges or credits of other Contractors.

TABLE L

[TABLE L shall set forth the relevant values that shall serve as the basis for allocation of all Transportation Charge Costs]

(This table was labeled Table B in original contract provisions)

(2) *Determinations Using Proportionate Use Factors.* The total amount in each category of Capital Costs allocated to a Contractor shall be the sum of the products obtained when there is multiplied, for each aqueduct reach necessary to deliver water to the Contractor, the total amount of the Capital Costs of the reach in that category to be returned to the State under the Transportation Charge by the average of the two foregoing ratios for such reach as such average is set forth in the appropriate table included in its contract.

(3) *Excess Capacity.* In the event that excess capacity is provided in any aqueduct reach for the purpose of making Project Water available in the future to an agency or agencies with which the State has not executed contracts at the time of any allocation of costs pursuant to this subdivision, the prospective Maximum Annual Table A Amount or Amounts to be supplied by such excess capacity, as determined by the State, shall be deemed to be contracted for by such agency or agencies for the purpose of such allocation of costs, to the end that the Capital Costs of providing such excess capacity are not charged to any Contractor entitled by virtue of an executed contract to the delivery of Project Water from or through that aqueduct reach at the time of such allocation. Where additional capacity is provided in any aqueduct reach to compensate for loss of water due to evaporation, leakage, seepage, or other causes, or to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of the facilities of the Project Facilities, then, for the purpose of any allocation of costs pursuant to this subdivision:

(A) the Maximum Annual Table A Amount to be delivered from or through the reach of each Contractor entitled to delivery of Project Water from or through the reach shall be increased by an amount which bears the same proportion to the maximum annual delivery capability provided by such additional capacity that the Contractor's Maximum Annual Table A Amount to be delivered from or through the reach bears to the total of the Maximum Annual Table A Amounts to be delivered from or through the reach under all contracts; and

(B) the capacity provided in the reach for each Contractor entitled to delivery of Project Water from or through the reach shall be increased in the same proportion that the Contractor's Maximum Annual Table A Amount to be delivered from or through the reach is increased pursuant to (A) above.

(4) *Power Facilities.* The Capital Costs of project aqueduct power recovery plants shall be charged and allocated in accordance with this Article 24.

The Capital Costs of off-aqueduct power facilities shall be charged and allocated in accordance with Article 25(d).

(5) *Capital Costs of Excess Capacity.* In the event that any Contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such Contractor in excess of the percentage amounts specified in such Article 12(b) for the uses designated therein, such Contractor shall furnish to the State, in advance of the construction of such aqueduct reach, funds sufficient to cover the costs of providing such excess capacity, which funds shall be in an amount which bears the same proportion to the total Capital Costs of such reach, including the costs of providing such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. For the purpose of any allocation of costs pursuant to subdivision (c)(1) of this article, the total Capital Costs of such aqueduct reach shall be allocated among all Contractors entitled to delivery of Project Water from or through the reach in the following manner:

(A) The costs which would have been Incurred for such reach had no such excess capacity been provided shall be estimated by the State and allocated among all such Contractors in the manner provided in such subdivision (c)(1); and

(B) the amount of the difference between such estimated costs and the projected actual costs of such reach shall be allocated to the Contractor or Contractors for which such excess capacity is provided.

Where such excess capacity is provided for more than one Contractor, the costs allocated to them under (B) above shall be further allocated between or among them in amounts which bear the same proportion to the total of such allocated costs as the amount of such excess capacity provided for the respective Contractor bears to the total of such excess capacity provided in such reach. In the event that the funds advanced by a Contractor pursuant to this subdivision are more or less than the costs so allocated to such Contractor under (B) above, the account of such Contractor shall be credited or debited accordingly.

(6) *Replacement Cost Treatment.* Replacement costs of Project Transportation Facilities shall be treated as either Capital Costs or as minimum operation, maintenance, power and replacement costs, as determined by the State considering the Economic Useful Life of the asset being replaced and other relevant factors.

(7) *East Branch Enlargement.* Notwithstanding provisions of Articles 24(a) through 24(c), Capital Costs associated with East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the capital component of the East Branch Enlargement Transportation Charge Article 49(d). Any Capital Costs of off-aqueduct power facilities associated with deliveries

through East Branch Enlargement Facilities shall be charged and allocated in accordance with Article 25(d).

25. TRANSPORTATION CHARGE -- MINIMUM OPERATION, MAINTENANCE, POWER, AND REPLACEMENT COMPONENT.

The provisions of this article shall apply to costs incurred both prior to and on or after the Billing Transition Date.

(a) **Purpose.** The minimum operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the Project Transportation Facilities necessary to deliver water to the Contractor which constitute operation, maintenance, power, and replacement costs Incurred irrespective of the amount of Project Water delivered to the Contractor and which are allocated to the Contractor pursuant to subdivision (b) of this article; *provided* that to the extent permitted by law, the State may establish reserve funds to meet anticipated minimum replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the minimum replacement costs for the year in which such deposits are made.

(b) **Allocation.** The total projected minimum operation, maintenance, power, and replacement costs of each aqueduct reach of the Project Transportation Facilities for the respective year shall be allocated among all Contractors entitled to delivery of Project Water from such facilities by the proportionate use of facilities method of cost allocation, in the same manner and upon the same bases as are set forth for the allocation of Capital Costs in subdivisions (c)(1) through (c)(3) of Article 24; *provided* that such minimum operation, maintenance, power, and replacement costs as are Incurred generally for the Project Transportation Facilities first shall be allocated to each aqueduct reach in an amount which bears the same proportion to the total amount of such general costs that the amount of the costs Incurred directly for the reach bears to the total of all direct costs for all aqueduct reaches.

(c) **Determination; Repayment Table.** The amount to be paid each year by the Agency under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (b) of this article on the basis of the relevant values to be set forth for the respective aqueduct reaches in Table L, included in Article 24; *provided* that these values shall be subject to redetermination by the State in accordance with Article 28. Such amounts and any appropriate interest thereon for costs incurred prior to the Billing Transition Date shall be set forth by the State in Table M as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that the amounts set forth in Table M shall be subject to redetermination by the State in accordance with Article 28.

TABLE M
TRANSPORTATION CHARGE -- MINIMUM OPERATION MAINTENANCE, POWER,
AND REPLACEMENT COMPONENT
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Total Annual Payment by Agency [*]
1 ^{**}	
2	
3	
4	

* Payment shall start with respect to each aqueduct reach in the year following the year in which the State completes construction of the respective reach.

** Year in which the State commences construction of Project Transportation Facilities.

(This table was labeled Table E in original contract provisions)

(d) **Off-Aqueduct Power Facilities.** Notwithstanding the provisions of subdivisions (a) through (c) of this Article or of Article 1(h), the costs of off-aqueduct power facilities shall be determined and allocated as follows:

(1) The off-aqueduct power costs shall include all annual costs the State incurs for any off-aqueduct power facility, which shall include, but not be limited to, power purchases, annual Financing Costs, and associated operation and maintenance costs of such facility, less any credits, interest earnings, or other monies received by the State in connection with such facility or Revenue Bonds issued to finance the Capital Costs of such facility. In the event the State finances all or any part of an off-aqueduct power facility directly from funds other than bonds or borrowed funds, in lieu of such annual principal and interest payments, the repayment of Capital Costs as to that part financed by such other funds shall be determined on the basis of the schedule that would have been required under Article 24.

(2) The annual costs of off-aqueduct power facilities as computed in (1) above shall initially be allocated among Contractors in amounts which bear the same proportions to the total amount of such power costs that the total estimated electrical energy (kilowatt hours) required to pump through Project Transportation Facilities the desired delivery of Annual Table A Amounts for that year, as submitted pursuant to Article 12(a)(1) and as may be modified by the State pursuant to Article 12(a)(2), bears to the total estimated electrical energy

(kilowatt hours) required to pump all such amounts for all Contractors through Project Transportation Facilities for that year, all as determined by the State.

(3) An interim adjustment in the allocation of the power costs calculated in accordance with (2) above, may be made in May of each year based on April revisions in approved schedules of deliveries of project and nonproject water for Contractors for such year. A further adjustment shall be made in the following year based on actual deliveries of project and nonproject water for Contractors; *provided, however*, that in the event no deliveries are made through a pumping plant, the adjustments shall not be made for that year at that plant.

(4) To the extent the monies received or to be received by the State from all Contractors for off-aqueduct power costs in any year are determined by the State to be less than the amount required to pay the off-aqueduct power costs in such year, the State may allocate and charge that amount of off-aqueduct power costs to the Agency and other Contractors in the same manner as costs under the capital component of the Transportation Charge are allocated and charged. After that amount has been so allocated, charged and collected, the State shall provide a reallocation of the amounts allocated pursuant to this paragraph (4), such reallocation to be based on the allocations made pursuant to (2) and (3) above for that year, or in the event no such allocation was made for that year, on the last previous allocation made pursuant to (2) and (3) above. Any such reallocation of costs incurred prior to the Billing Transition Date shall include appropriate interest thereon at the Project Interest Rate.

(e) The total minimum operation, maintenance, power and replacement component due that year from each Contractor shall be the sum of the allocations made under the proportionate use of facilities method provided in subdivision (b) of this article and the allocations made pursuant to subdivision (d) of this article for each Contractor.

(f) Notwithstanding provisions of Articles 25(a) through 25(c) and 25(e), minimum operation, maintenance, power, and replacement costs associated with deliveries through East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the minimum operation, maintenance, power, and replacement component of the East Branch Enlargement Transportation Charge as determined under Article 49(e).

26. TRANSPORTATION CHARGE -- VARIABLE OPERATION, MAINTENANCE AND POWER COMPONENT.

The provisions of this article shall apply to costs Incurred both prior to and on or after the Billing Transition Date.

(a) **Purpose.** The variable operation, maintenance, and power component of the Transportation Charge shall return to the State those costs of the Project Transportation Facilities necessary to deliver water to the Contractor which constitute operation, maintenance, power and replacement costs Incurred in an amount which is dependent upon and varies with the amount of Project Water delivered to the Contractor and which are allocated to the Contractor pursuant to (1) and (2) below; *provided* that to the extent permitted by law, the State may establish reserve funds to meet anticipated variable replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the variable replacement costs for the year in which such deposits are made.

(b) **Determination.** The amount of this variable operation, maintenance, and power component shall be determined as follows:

(1) *Determination of Charge Per Acre-Foot.* There shall be computed for each calendar year for each aqueduct reach of the Project Transportation Facilities a charge per acre-foot of water which will return to the State the total projected variable operation, maintenance and power costs of the reach for such calendar year. This computation shall be made by dividing such total by the number of acre-feet of Project Water estimated to be delivered from or through the reach to all Contractors during the year.

(2) *Determination of Charge Per Reach to the Contractor.* The amount of the variable component shall be the product of the sum of the charges per acre-foot of water, determined under (1) above, for each aqueduct reach necessary to deliver water to the Contractor, and the number of acre-feet of Project Water delivered to the Contractor during the year through such reach; *provided* that when Project Water has been requested by a Contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the Contractor to accept delivery thereof, the amount of such variable component to be paid by such Contractor during such period shall be the product of the above sum and the sum of the number of acre-feet of Project Water delivered to the Contractor and the number of acre-feet wasted.

(c) **Credit Relating to Project Aqueduct Power Recovery Plants.** There shall be credited against the amount of the variable operation, maintenance, and power component to be paid by each Contractor, as determined pursuant to subdivision (a) of this article, a portion of the projected net value of any power recovered during the

respective year at project aqueduct power recovery plants located upstream on the particular aqueduct reach from the delivery structures for delivery of Project Water to the Contractor. Such portion shall be in an amount which bears the same proportion to such projected net value that the number of acre-feet of Project Water delivered to the Contractor through such plants during the year bears to the number of acre-feet of Project Water delivered to all Contractors through such plants during the year.

(d) **Determination of Total Variable Component Charge.** The amount to be paid each year by the Agency under the variable operation, maintenance, and power component of the Transportation Charge shall be determined in accordance with subdivision (a) of this article for the respective aqueduct reaches in Table L included in Article 24. Such amounts and any appropriate interest thereon for costs incurred prior to the Billing Transition Date shall be set forth by the State in Table N as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a); *provided* that the amounts set forth in Table N shall be subject to redetermination by the State in accordance with Article 28.

**TABLE N
TRANSPORTATION CHARGE -- ESTIMATED VARIABLE OPERATION,
MAINTENANCE, AND POWER COMPONENT
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

Year	Total Annual Payment by Agency*
1**	
2	
3	
4	

* Payments start with year of initial water delivery.

** Year in which the State commences construction of the Project Conservation Facilities.

(This table was labeled Table F in original contract provisions)

(e) **No Separate Variable Component for East Branch Enlargement Facilities.** There shall be no separate variable operation, maintenance, and power component for deliveries of water through East Branch Enlargement Facilities defined in Article 49(a).

27. TRANSPORTATION CHARGE -- REPAYMENT SCHEDULE.

The amounts to be paid by the Agency for each year under the Capital Cost and minimum operation, maintenance, power, and replacement components of the Transportation Charge, and under the variable operation, maintenance, and power component of such charge on the basis of then estimated deliveries, shall be set forth by the State in Table O as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the Agency as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of Project Water to the Agency, pursuant to Article 17(a), which Table O shall constitute a summation of Tables I, K, M, and N; *provided* that each of the amounts set forth in Table O shall be subject to redetermination by the State in accordance with Article 28; *provided further* that the principles and procedures set forth in Articles 24, 25, and 26 shall be controlling as to such amounts. Such amounts shall be paid by the Agency in accordance with the provisions of Article 29.

TABLE O
REPAYMENT SCHEDULE--TRANSPORTATION CHARGE
NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Year	Capital Cost Component	Minimum Component	Variable Component	Total
1*				
2**				
3				
4				

* Year in which State commences construction of Project Transportation Facilities.

** Year of first payment.

(This table was labeled Table G in original contract provisions)

**28. DELTA WATER CHARGE AND TRANSPORTATION CHARGE --
REDETERMINATION.**

(a) **Redetermination of Transportation Charges for Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) shall apply only to costs Incurred prior to the Billing Transition Date.

(1) *Determinative Factors Subject to Retroactive Change.* The State shall redetermine the values and amounts set forth in Tables H through O (referred to in the original contract provisions as Tables B through G) of this contract in the year following the year in which the State commences construction of the Project Transportation Facilities and each year thereafter during the Project Repayment Period in order that the Transportation Charge to the Agency and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred prior to the Billing Transition Date to construct the Project Transportation Facilities described in Table G of this contract, Annual Table A Amounts, estimated deliveries, Project Interest Rate, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the Agency for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the Agency or credited to the Agency's account in the manner described in (b) and (c) below.

(2) *Adjustment: Transportation Charge -- Capital Component For Costs Incurred Prior to the Billing Transition Date.* Adjustments for prior underpayments or overpayments of the capital component of the Transportation Charge to the Agency for costs Incurred prior to the Billing Transition Date, together with accrued interest charges or credits thereon computed at the then current Project Interest Rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination; *provided* that the Agency may elect to exercise the option whereby when the redetermined Transportation Charge for the following year, with adjustments, including adjustments of the operation, maintenance, power, and replacement components provided for in subdivision (a)(3) of this article, is more or less than the last estimate of the charge provided pursuant to Article 27 for the corresponding year, without adjustments, an amount equal to the total of such difference shall be deducted

from or added to the adjusted capital component for that year and paid or credited in accordance with the following schedule:

Percent that Transportation Charge for costs Incurred prior to the Billing Transition Date differs from last estimate (+ or -)	Period, in years, for amortizing the difference in indicated charge
for 10% or less	no amortization
more than 10%, but not more than 20%	2
more than 20%, but not more than 30%	3
more than 30%, but not more than 40%	4
more than 40%	5

Such payments or credits shall be equal semi-annual amounts of principal and interest on or before the 1st day of January and the 1st day of July, with interest computed at the Project Interest Rate and compounded annually, during varying amortization periods as set forth in the preceding schedule; *provided* that for the purpose of determining the above differences in the Transportation Charge for costs Incurred prior to the Billing Transition Date, the variable operation, maintenance, and power component shall be computed on the basis of the same estimated Project Water deliveries as was assumed in computing pursuant to Article 26(c).

(3) *Adjustment: Transportation Charge -- Minimum and Variable Components for costs Incurred prior to the Billing Transition Date.* One-twelfth of the adjustments for prior underpayments or overpayments of the Agency's minimum and variable operation, power, and replacement components for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current Project Interest Rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination.

(4) *Exercise of Option.* The option provided for in subdivision (a)(2) of this article shall be exercised in writing on or before the January 1 due date of the first payment of the capital component of the Transportation Charge for the year in which the option is to become effective. Such option, once having been exercised, shall be applicable for all of the remaining years of the Project Repayment Period.

(5) *Project Interest Rate Adjustments.* Notwithstanding the provisions of subdivision (a)(2) of this article, adjustments for prior overpayments and underpayments shall be repaid beginning in the year following the

redetermination by application of a unit rate per acre-foot which, when paid for the projected portion of the Agency's Annual Table A Amount will return to the State, during the Project Repayment Period, together with interest thereon computed at the Project Interest Rate and compounded annually, the full amount of the adjustments resulting from financing after January 1, 1987, from all bonds, advances, or loans listed in Article 1(ad) except for Article 1(ad)(3) and except for bonds issued by the State under the Central Valley Project Act after January 1, 1987 for facilities not listed among the Water System Facilities in Article 1(ap). Notwithstanding the immediately preceding exception, such amortization shall also apply to any adjustments in this component charge resulting from a change in the Project Interest Rate due to any refunding after January 1, 1986 on bonds issued under the Central Valley Project Act. However, amortization of adjustments resulting from items listed in subdivisions (1)(ad)(4) through (7) of Article 1 shall be limited to a period which would allow the Department to repay the debt service on a current basis until such time as bonds are issued to reimburse the source of such funding. In no event shall this amortization period be greater than the Project Repayment Period.

(6) *No Adjustment of Water System Facility Revenue Bond Financing Costs.* The use of Water System Facility Revenue Bonds for financing facilities listed in Article 1(ap) shall not result in adjustments for prior underpayments or overpayments of the capital component of the Transportation Charge to the Agency under the provisions of this article. In place of making such adjustments, charges to the Agency for Water System Facility Revenue Bond Financing Costs will be governed by Article 50(a).

(b) **Redetermination of Delta Water Charges and Transportation Charges for Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) shall apply only to costs Incurred on or after the Billing Transition Date.

(1) *Determinative Factors Subject to Retroactive Change.* The State shall redetermine the values and amounts set forth in Tables B through F and Tables J through O of this contract each calendar year commencing on or after the Billing Transition Date in order that the Delta Water Charge and the Transportation Charge to the **Agency** for costs Incurred on or after the Billing Transition Date and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State Incurred to construct Project Conservation Facilities and Project Transportation Facilities, Annual Table A Amounts, estimated deliveries, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Delta Water Charge and Transportation Charge to be paid by the **Agency** for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State, as applicable. Such adjustment shall be computed by the State and paid by the

Agency or credited to the Agency's account in the manner described in subdivisions (b)(2) and (b)(3) of this article.

(2) Adjustment: Delta Water Charge and Transportation Charge -- Capital Components for Costs Incurred On or After the Billing Transition Date.

Adjustments for prior underpayments or overpayments of the capital component of the Delta Water Charge and the Transportation Charge to the Agency for costs Incurred on or after the Billing Transition Date shall be paid in the year following the redetermination.

(3) Adjustment: Delta Water Charge and Transportation Charge -- Minimum and Variable Components for Costs Incurred On or After the Billing Transition Date One-twelfth of the adjustments for prior underpayments or overpayments of the Agency's minimum operation, maintenance, power, and replacement component and variable operation, maintenance and power component of the Delta Water Charge and Transportation Charge for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination.

29. TIME AND METHOD OF PAYMENT OF DELTA WATER CHARGE AND TRANSPORTATION CHARGE.

The provisions of this article shall apply to costs Incurred both prior to and on or after the Billing Transition Date. References to the Delta Water Charge shall include the Delta Water Charge for costs Incurred prior to the Billing Transition Date and the Delta Water Charge for costs Incurred on or after the Billing Transition Date, separately, as applicable, and references to the Transportation Charge shall include the Transportation Charge for costs Incurred prior to the Billing Transition Date and the Transportation Charge for costs Incurred on or after the Billing Transition Date, separately, as applicable.

(a) Initial Payments.

(1) *Delta Water Charge.* Payments by the Agency under the Delta Water Charge shall commence in the Year of Initial Water Delivery to the Agency.

(2) *Capital Component of the Transportation Charge.* Payments by the Agency under the capital component of the Transportation Charge shall commence in the year following the year in which the State commences construction of the Project Transportation Facilities.

(3) *Minimum Operation, Maintenance, Power, and Replacement Component.* Payments by the Agency under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall commence for each aqueduct reach in the year following the year in which construction of that reach is completed.

(4) *Variable Operation, Maintenance, Power, and Replacement Component.* Payments by the Agency under the variable operation, maintenance, power and replacement component of the Transportation Charge shall commence in the Year of Initial Water Delivery to the Agency.

(b) **Annual Statement of Charges.** The State shall, on or before July 1 of each year, commencing with the year preceding the year in which payment of the respective charge is to commence pursuant to this article, furnish the Agency with a written statement of the following items:

(1) the charges to the Agency for the next succeeding year under the capital components and minimum operation, maintenance, power, and replacement components of the Delta Water Charges and Transportation Charges; *provided* that charges for Financing Costs shall be stated as separate items in the Statement of Charges;

(2) the unit charges to the Agency for the next succeeding year under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge; and

(3) the total charges to the Agency for the preceding year under the variable operation, maintenance, power and replacement components of such Delta Water Charge and Transportation Charge; *provided* that through December 31, 1969, the Delta Water Charge shall be based upon a unit rate of \$3.50 per acre-foot and shall be paid by the Contractors on the basis of their respective Annual Table A Amounts, as provided in Article 22(b).

All such statements shall be accompanied by the latest revised copies of the documents amendatory to Article 22 and of the tables included in Articles 24 through 27, together with such other data and computations used by the State in determining the amounts of the above charges as the State deems appropriate.

(c) **Monthly Statements.** The State shall, on or before the fifteenth day of each month of each year, commencing with the Year of Initial Water Delivery to the Agency, furnish the Agency with a statement of the charges to the Agency for the preceding month under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge. Such charges shall be determined by the State in accordance with the relevant provisions of Articles 22 and 26 of this contract, upon the basis of metered deliveries of Project Water to the Agency, except as otherwise provided in those articles.

(d) **Semiannual Payments of Capital Components.** The Agency shall pay to the State, on or before January 1 of each year, one-half (1/2) of the charge to the Agency for the year under the capital component of the Delta Water Charge and one-half (1/2) of the charge to the Agency for the year under the capital component of the Transportation Charge, as such charges are stated pursuant to subdivision (b) of this article; and shall pay the remaining one-half (1/2) of each of such charges on or before July 1 of that year.

(e) **Monthly Payments of Minimum Operation, Maintenance, Power, and Replacement Component.** The Agency shall pay to the State, on or before the first day of each month of each year, one-twelfth (1/12) of the sum of the charges to the Agency for the year under the minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, as such charges are stated pursuant to subdivision (b) of this article.

(f) **Monthly Payments of Variable Operation, Maintenance, Power, and Replacement Component.** The Agency shall pay to the State on or before the fifteenth day of each month of each year, the charges to the Agency under the variable operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, for which a statement was received by the Agency during the preceding month pursuant to subdivision (c) of this article, as

such charges are stated in such statement.

(g) **Contest of Charges.** In the event that the Agency in good faith contests the accuracy of any statement submitted to it pursuant to subdivision (b) or (c) of this article, it shall give the State notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that the State finds the Agency's contentions regarding the statement to be correct, it shall revise the statement accordingly, and the Agency shall make payment of the revised amounts on or before the due date. To the extent that the State does not find the Agency's contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the Agency shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from the State.

50. WATER SYSTEM FACILITY REVENUE BOND FINANCING COSTS.

(a) **Water System Facility Revenue Bonds to Finance Capital Costs Incurred Prior to the Billing Transition Date.** The provisions of this subdivision (a) shall apply to the Financing Costs of Revenue Bonds issued to finance Water System Facility Capital Costs Incurred prior to the Billing Transition Date. Charges to all Contractors for such Financing Costs shall return to the State each year an amount equal to the Financing Costs the State incurs in that year for such Water System Facility Revenue Bonds.

(1) *Elements of Charge.* Annual charges to recover such Water System Facility-Revenue Bond Financing Costs shall consist of two elements.

(A) The first element shall be an annual charge to the Agency for repayment of Capital Costs of Water System Facilities as determined under Articles 22(a) and 24(a) of this contract with interest at the Project Interest Rate. For conservation facilities, the charge shall be a part of the capital component of the Delta Water Charge in accordance with the provisions of Article 22(a) applicable to Capital Costs Incurred prior to the Billing Transition Date. For transportation facilities, the charge shall be a part of the capital component of the Transportation Charge in accordance with the provisions of Article 24(a) applicable to Capital Costs Incurred prior to the Billing Transition Date.

(B) The second element shall be the Agency's share of a Water System Facility Revenue Bond Surcharge to be paid in lieu of a Project Interest Rate adjustment. The total annual amount to be paid by all Contractors under this element shall be the difference between the total annual charges under the first element and the annual Financing Costs of the related Water System Facility Revenue Bonds. The amount to be paid by each Contractor shall be calculated annually as if the Project Interest Rate were increased to the extent necessary to produce revenues from all Contractors sufficient to pay such difference for that year. In making that calculation, adjustments in the Agency's transportation capital component charges for prior overpayments and underpayments shall be determined as if amortized over the remaining years of the Project Repayment Period.

(2) *Identification of Surcharge on Invoices.* The Water System Facility Revenue Bond Surcharge will be identified in the Agency's invoice.

(3) *Timing of Surcharge Payments.* Surcharge payments shall be made in accordance with Article 29(f) of this contract.

(4) *Termination of Surcharge.* The Water System Facility Revenue Bond Surcharge under Article 50(a)(1)(B) shall cease for each series of Water System Facility Revenue Bonds when that series is fully repaid. However, the

annual charge determined pursuant to Article 50(a)(1)(A) shall continue to be collected for the time periods otherwise required under Articles 22 and 24.

(5) *Reduction of Charges.* After the Department has repaid the California Water Fund in full and after each series of Water System Facility Revenue Bonds is repaid, the Department will reduce the charges to all Contractors in an equitable manner in a total amount that equals the amount of the charges under Article 50(a)(1)(A) that the Department determines is not needed for future financing of facilities of the System which, in whole or in part, will serve the purposes of the water supply contract with the Agency.

(b) **Water System Facility Revenue Bonds to Finance Capital Costs Incurred On or After the Billing Transition Date.** The provisions of this subdivision (b) shall apply to the Financing Costs of Revenue Bonds issued to finance Water System Facility Capital Costs Incurred on or after the Billing Transition Date. Charges to all Contractors for such Financing Costs shall return to the State each year an amount equal to the Financing Costs the State incurs in that year for such Water System Facility Revenue Bonds. The amount of this charge shall be calculated in two steps as follows:

(1) *Allocation of Water System Facility Capital Costs.* Capital Costs Incurred on or after the Billing Transition Date of Water System Facilities that are conservation facilities shall be allocated among all Contractors in proportion to each Contractor's Maximum Annual Table A Amount. Capital Costs Incurred on or after the Billing Transition Date of Water System Facilities that are transportation facilities shall be allocated among all Contractors in accordance with Article 24(c).

(2) *Determination of Annual Financing Cost Amounts.* The State shall determine and charge the Agency each year the amount of the Financing Costs the State incurs in that year for the Water System Facility Revenue Bonds issued to finance such Water System Facility Capital Costs allocated to the Agency.

(c) **Provisions Applicable to All Water System Facility Revenue Bonds.** The provisions of this article shall apply to all Water System Facility Revenue Bonds.

(1) *Credits for Excess Amounts.* The State shall provide credits to the Contractors for excess reserve funds, excess debt service coverage, interest, and other earnings of the State in connection with payment of the Financing Costs of such Water System Facility Revenue Bonds, when and as permitted by the applicable bond resolution or indenture. When such credits are determined by the State to be available, such credits shall be promptly provided to the Contractors and shall be in proportion to the payments of Water System Facility Revenue Bond Financing Costs from each Contractor. Reserves, bond debt service coverage, interest, and other earnings may be used to retire bonds.

(2) *Allocation of Maturities Permitted.* When calculating charges for Water System Facility Revenue Bond Financing Costs, the State may allocate portions of particular maturities of Water System Facility Revenue Bonds and the Financing Costs associated with such maturities to particular Water System Facilities, in order to establish a reasonable relationship between the Economic Useful Life of such facilities and the term of bonds issued to finance such facilities, and may determine the Financing Costs allocated to the Agency on the basis of such maturity allocation.

(3) *Supplemental Bills for Unanticipated Financing Costs.* The State may submit a supplemental bill to the Agency for the year if necessary to meet unanticipated costs for Water System Facility Revenue Bond Financing Costs for which the State can issue a statement of charges under this article and any other article of this contract providing for payments that are pledged to the payment of Revenue Bonds issued to finance Project Facility Capital Costs allocated to the Agency. The relative amounts of any supplemental billing made to the Agency and to other Contractors for Revenue Bond purposes shall be governed by the otherwise applicable article. Payment of any supplemental billing shall be due thirty days after the date of the invoice.

(4) *Insurance on Contractor Obligations.* To the extent economically feasible and justifiable, as determined by the State after consultation with Contractors, the State shall maintain insurance or other forms of security protecting bondholders and non-defaulting Contractors against costs resulting from the failure of any Contractor to make the payments required by this article.

(5) *Consultation on Financing Plan.* Before issuing each series of Water System Facility Revenue Bonds, the State shall consult with the Contractors, prepare a plan for the State's future financing of Water System Facilities, and give the Agency an opportunity to comment on the plan. The plan shall include but not be limited to the size of any Water System Facility Revenue Bond issuances and the form of any necessary resolutions, indentures or supplements.

(6) *Defaults.*

(A) If a Contractor defaults partially or entirely on its payment obligations with respect to Water System Facility Revenue Bond Financing Costs and sufficient insurance or other security protecting the non-defaulting Contractors is not provided under subdivision (c)(4) of this article, the State shall allocate a portion of the default to each non-defaulting Contractor. The **Agency's** share of the default shall be equal to an amount determined by multiplying the total default amount to be charged to all non-defaulting Contractors by the ratio that the Agency's Maximum Annual Table A Amount bears to the total of the Maximum Annual Table A Amounts of all non-defaulting Contractors. However, such amount shall not exceed in any year 25 percent of the Water System

Facility Revenue Bond Financing Costs that are otherwise payable by the Agency in that year. The amount of default to be charged to non-defaulting Contractors shall be reduced by any receipts from insurance protecting non-defaulting Contractors and bond debt service coverage from a prior year and available for such purpose.

(B) If a Contractor defaults partially or entirely on its payment obligations under this article, the State shall also pursuant to Article 20, upon six months' notice to the defaulting Contractor, suspend water deliveries under Article 20 to the defaulting Contractor so long as the default continues. The suspension of water deliveries shall be proportional to the ratio of the default to the total Water System Facility Revenue Bond Financing Cost payments due from the defaulting Contractor. However, the State may reduce, eliminate, or not commence suspension of deliveries pursuant to this subparagraph if it determines suspension in the amounts otherwise required is likely to impair the defaulting Contractor's ability to avoid further defaults or that there would be insufficient water for human consumption, sanitation, and fire protection. The State may distribute the suspended water to the non-defaulting Contractors on terms it determines to be equitable.

(C) During the period of default, credits otherwise due the defaulting Contractor shall be applied to payments due from the defaulting Contractor.

(D) Except as otherwise provided in subparagraph (c) of this article, the defaulting Contractor shall repay the entire amount of the default to the State with interest compounded annually at the Surplus Money Investment Fund rate before water deliveries that had been suspended shall be fully resumed to that Contractor. If the defaulting Contractor makes a partial repayment of its default, the Department may provide a proportional restoration of suspended deliveries. The amount of the default to be repaid shall include any amounts previously received by the State from insurance proceeds, bond debt service coverage, or other reserves, and payments from other Contractors pursuant to this subparagraph (c)(6). The defaulting Contractor shall not be entitled to any

make-up water deliveries as compensation for any water deliveries suspended during the period when the Contractor was in default.

(E) At such time as the default amount is repaid by the defaulting Contractor, the non-defaulting Contractors shall receive credits in proportion to their contributions towards the amount of the default with interest collected by the State on the defaulted amount.

(F) In the event there is an increase in the amount a non-defaulting Contractor contributes to reserves and/or bond debt service coverage, such increase shall be handled in the same manner as provided in subparagraph (a) of this article.

(G) Action taken pursuant to this subdivision shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

(7) *No Article 51 Reduction.* Amounts of Water System Facility Revenue Bond Financing Costs payable under this contract shall not be affected by any reductions in payments pursuant to Article 51.

(8) *Contract Extension.* In the event the Contract Extension Amendment takes effect, but not all Contractors sign the amendment, the following shall apply: If and to the extent that the charges under Article 50(b)(1) and 50(b)(2) of the water supply contracts of Contractors that have not executed the Contract Extension Amendment ("non-signing Contractors") are not sufficient to recover the annual Financing Costs that relate to Revenue Bonds issued to finance capital costs that are Incurred after the Billing Transition Date and are allocable to such non-signing Contractors, the amount of the shortfall shall be determined. Such shortfall shall be charged to the Contractors that have executed the Contract Extension Amendment ("signing Contractors") in proportion to each such signing Contractor's total Water System Facility Revenue Bond Financing Cost charges under Article 50(b) of this contract.

51. FINANCIAL ADJUSTMENTS.

(a) Article Expiration.

This Article 51 shall be effective through December 31, 2035 and shall be of no further effect on and after January 1, 2036; provided, however, that the provisions of this Article 51 may, to the extent applicable, continue to be used and applied on and after January 1, 2036 for the purpose of truing up amounts owed by the Agency to the State or by the State to the Agency for the calendar years up to and ending with calendar year 2035.

(b) State Water Facilities Capital Account.

(1) The State shall establish a State Water Facilities Capital Account to be funded from revenues available under Water Code section 12937(b)(4). Through procedures described in this article and as limited by this article, the State may consider as a revenue need under subdivision (c)(2)(v) of this article and may deposit in the State Water Facilities Capital Account the amounts necessary to pay capital costs of the State Water Facilities for which neither general obligation bond nor revenue bond proceeds are available, including but not limited to planning, reconnaissance and feasibility studies, the San Joaquin Valley Drainage Program and, through the year 2000, the CALFED Bay-Delta Program.

(2) The Director of the Department of Water Resources shall fully consult with the Contractors and consider any advice given prior to depositing funds into this account for any purposes. Deposits into this account shall not exceed the amounts specified in subdivision (c)(2)(v) of this article.

(3) The State shall use revenue bonds or other sources of moneys rather than this account to finance the costs of construction of any major capital projects.

(4) Five years following the Contract Extension Amendment Effective Date, the SWRDS Finance Committee shall review the State Water Facilities Capital Account to determine whether to recommend to the Director that this account be closed. If the Director determines to close the account, the State shall transfer any balance in the account to the SWRDS Support Account.

(5) Unless closed sooner, the State Water Facilities Capital Account shall terminate on December 31, 2035 and the State shall transfer any balance in such account to the SWRDS Support Account.

(c) Calculation of Financial Needs.

(1) Each year the State shall calculate in accordance with the timing provisions of Articles 29 and 31 the amounts that would have been charged (but for this article) to each Contractor as provided in other provisions of this contract.

(2) Each year the State shall also establish its revenue needs for the following year for the following purposes, subject to the following limitations:

(i) The amount required to be collected under the provisions of this contract, other than this article, with respect to all revenue bonds issued by the State for Project Facilities.

(ii) The amount required for payment of the reasonable costs of the annual maintenance and operation of the State Water Resources Development System and the replacement of any parts thereof as described in Water Code section 12937(b)(1). These costs shall not include operation and maintenance costs of any Federal Central Valley Project facilities constructed by the United States and acquired by the State of California after 1994, other than the State's share of the joint use facilities which include San Luis Reservoir, the San Luis Canal and related facilities.

(iii) The amount required for payment of the principal of and interest on the bonds issued pursuant to the Burns-Porter Act as described in Water Code section 12937(b)(2).

(iv) Any amount required for transfer to the California Water Fund in reimbursement as described in Water Code section 12937(b)(3) for funds utilized from said fund for construction of the State Water Resources Development System.

(v) For the years 1998 and thereafter, the amount needed for deposits into the State Water Facilities Capital Account as provided in subdivision (b) of this article, but (A) not more than \$6 million per year for the years 1998, 1999 and 2000, and (B) not more than \$4.5 million per year for the years 2001 and thereafter.

(3) The State shall reduce the annual charges in the aggregate for all Contractors by the amounts by which the hypothetical charges calculated pursuant to subdivision (c)(1) above exceed the revenue needs determined pursuant to subdivision (c)(2) above; provided that the reduction in annual charges in the aggregate for all Contractors shall not exceed \$48 million in any year beginning with the first calendar year following the Contract Extension Amendment Effective Date. The provisions regarding the reduction in annual charges that were in effect prior to the Contract Extension Amendment Effective Date shall continue to apply to the entire calendar year in which the Contract Extension Amendment Effective Date

occurs. The reductions under this article shall be apportioned among the Contractors as provided in subdivisions (d), (e), (f) and (g) of this article. Reductions to Contractors shall be used to reduce the payments due from the Contractors on each January 1 and July 1; provided, however, that to the extent required pursuant to subdivision (h) of this article, each Agricultural Contractor shall pay to the Agricultural Rate Management Trust Fund an amount equal to the reduction allocated to such Agricultural Contractor. Any default in payment to the trust fund shall be subject to the same remedies as any default in payment to the State under this contract. To determine whether the reduction in annual charges in the aggregate for all Contractors equals the \$48 million limit specified in this subdivision (c)(3), it shall be assumed that all Contractors have executed the Contract Extension Amendment and will share in the available rate reductions consistent with the proportions as provided in this contract, regardless of whether one or more Contractors do not receive a reduction under their respective Water Supply Contracts.

(4) The supplemental billing provisions authorized under this Article 51(c)(4) shall remain in effect through December 31, 2035, unless the Director determines in his or her discretion to eliminate the use of supplemental billing prior to that date or the Director in his or her discretion accepts a recommendation from the SWRDS Finance Committee to eliminate the use of supplemental billing prior to that date.

(i) The State shall inform the SWRDS Finance Committee if the available System cash balances are projected by the State to fall during the succeeding one hundred twenty (120) days to an amount below an amount equal to ninety (90) days operating expenditures. The SWRDS Finance Committee shall make a recommendation in light of such circumstances to the Director.

(ii) The State may submit a supplemental billing to the Agency for the year in an amount not to exceed the amount of the prior reductions for such year under this Article if necessary to meet unanticipated costs for purposes identified in Water Code Section 12937(b)(1) and (2) for which the State can issue billings under other provisions of this contract, subject to the following procedures and limitations:

(a) The State may only issue supplemental bills pursuant to the provisions of this Article 51(c)(4) when available System cash

balances are projected to be less than the amount equal to 90 days operating expenditures.

(b) The term “available System cash balances,” for purposes of subdivision (a) of this Article 51(c)(4)(ii) shall mean available amounts in the following California Water Resources Development Bond Fund accounts: System Revenue Account (to the extent the funds in the System Revenue Account are not projected to be needed for payment of Burns-Porter General Obligation Bond debt service within the next two years), General Operating Account, SWRDS Reinvestment Account, and SWRDS Support Account (to the extent the funds in the SWRDS Support Account are not projected to be needed for non-reimbursable expenditures within the next two years).

(c) The term “operating expenditures” for purposes of subdivision (a) of this Article 51(c)(4)(ii) shall mean the costs described in California Water Code Section 12937(b) chargeable to the State Water Project as water supply.

(d) Any supplemental billing made to the Agency for these purposes shall be in the same proportion to the total supplemental billings to all Contractors for these purposes as the prior reduction in charges to the Agency in that year bears to the total reduction in charges to all Contractors in that year and shall be treated as reducing the amount of the reduction made available for that year to the Contractor by the amount of the supplemental bill to the Contractor.

(5) The State may also submit a supplemental billing to the Agency for the year if necessary to meet unanticipated costs for revenue bond debt service and coverage for which the State can issue a statement of charges under provisions of this contract other than this article. The relative amounts of any supplemental billing made to the Agency and to other Contractors for revenue bond purposes shall be governed by such other applicable provisions of this contract.

(6) Payment of any supplemental billing shall be due thirty days after the date of the invoice. Delinquency and interest on delinquent amounts due shall be governed by Article 32.

(d) Apportionment of Reductions between Agricultural and Urban Contractors.

(1) Commencing with the first calendar year following the Contract Extension Amendment Effective Date, the State shall apportion available reductions for each year in accordance with this Article.

(2) Annual reductions in the aggregate amount of \$48 million are projected to be available in the first calendar year following the Contract Extension Amendment Effective Date and each succeeding year through calendar year 2035 and shall be applied as follows:

(i) If reductions are available in an aggregate amount that equals \$48 million, \$11,856,000 of reductions shall be apportioned among the Agricultural Contractors, and \$36,144,000 of reductions shall be apportioned among the Urban Contractors.

(ii) If reductions are available in an aggregate amount less than \$48 million in any of these years, the reductions shall be divided on a 24.7%-75.3% basis between the Agricultural Contractors and the Urban Contractors respectively.

(3) No Contractor shall be entitled to receive in any year any additional reductions, including any additional reductions to make up for deficiencies in past projected reductions and any additional reductions above an aggregate annual amount of \$48 million.

(4) Reductions in annual charges to a Contractor pursuant to this Article 51 (d) shall only be made prospectively beginning with the later of the first calendar year following the Contract Extension Amendment Effective Date or the first calendar year following the date the Contractor executes the Contract Extension Amendment. Apportionments of reductions shall be calculated on the assumption that all Contractors have executed such amendment.

(e) Revenues and Reports.

(1) Each year, beginning with the first calendar year commencing after the Contract Extension Amendment Effective Date, the Director shall determine the amount of available Article 51(e) Amounts. The Director shall determine the aggregate amount that would have been charged to all Contractors in any year but for this Article 51 and from that amount shall deduct the sum of

(i) the amount of revenues needed for the purposes specified in subdivisions (c)(2)(i), (ii), (iii), (iv) and (v) plus

(ii) \$48 million.

The remaining amount, if any, shall be referred to herein as “Article 51(e) Amounts”.

(2) The State shall allocate available Article 51(e) Amounts as follows: The Director in his or her discretion shall allocate and transfer or deposit up to 80% of available Article 51(e) Amounts, as determined on a projected basis, and up to 100% of available Article 51(e) Amounts, as determined on an actual basis, into the General Operating Account, the SWRDS Support Account and/or the SWRDS Reinvestment Account. Any Article 51(e) Amounts determined on an actual basis to be remaining in the Systems Revenue Account after the Director allocates and transfers such amounts to the General Operating Account, the SWRDS Support Account and/or the SWRDS Reinvestment Account shall remain in the Systems Revenue Account and shall be tracked separately in the State’s Financial Information System. The Director shall have full discretion regarding the use of the amounts remaining in the Systems Revenue Account.

(3) The State shall prepare and distribute an Annual Rate Reduction Determination Report setting out the factors used to determine reductions in rates pursuant to Article 51(c). The report shall include a display of the distribution of gross annual revenues before, among other items, recreation and fish and wildlife expenditures, contributions to the State Water Facilities Capital Account and reduction in rates pursuant to Article 51(c). The report shall also include a display of the distribution and/or allocation of net annual revenues after reduction in rates pursuant to Article 51(c), to the General Operating Account, SWRDS Support Account, SWRDS Reinvestment Account, 51(e) Sub-Account of the Systems Revenue Account, Davis-Dolwig Fund, State Water Facilities Capital Account, and Suspended Costs, as applicable.

(4) The System Financial Activity Report, which is required to be prepared quarterly pursuant to Article 61(d), shall include annual and accumulated Article 51(e) Amounts and expenditure activity, including the beginning balance, the annual activity and the ending balance for the year for each fund or account into which Article 51(e) Amounts have been transferred or deposited. The System Financial Activity Report should also have sufficient detail to provide comprehensive accounting of annual Article 51(e) Amounts and the uses of the annual Article 51(e) Amounts to enable the SWRDS Finance Committee to assess the use of these amounts.

(f) **Apportionment of Reductions Among Urban Contractors.**

Reductions in annual charges apportioned to Urban Contractors under subdivision (d) of this article shall be further allocated among Urban Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Urban Contractor shall be based on each Urban Contractor's proportionate share of total allocated capital costs as calculated below, for both project conservation and project transportation facilities, repaid by all Urban Contractors over the project repayment period.

(1) The conservation capital cost component of the reduction allocation shall be apportioned on the basis of maximum annual Table A amount. Each Urban Contractor's proportionate share shall be the same as the percentage of that Contractor's maximum annual Table A amount to the total of all Urban Contractors' maximum annual Table A.

(2) The transportation capital cost component of the reduction allocation shall be apportioned on the basis of transportation capital cost component repayment obligations, including interest over the project repayment period. Each Urban Contractor's proportionate share shall be the same as the percentage that the Contractor's total transportation capital cost component repayment obligation is of the total of all Urban Contractors' transportation capital cost component repayment obligations.

(i) Recalculations shall be made annually through the year 1999. Beginning in the year 2000 recalculations shall be made every five years unless an Urban Contractor requests a recalculation for an interim year and does so by a request in writing delivered to the Department by January 1 of the year in which the recalculation is to take place.

(ii) The transportation capital cost component repayment obligations, for purposes of this Article 51(f), shall be based in the year of recalculation on the then most recent Department of Water Resources Bulletin 132, Table B-15, "Capital Cost Component of Transportation Charge for Each Contractor," or its equivalent, excluding any costs or Table A amount associated with transfers of Table A amounts from Agricultural Contractors pursuant to Article 53.

(3) To reflect the relative proportion of the conservation capital cost component and the transportation capital cost component to the total of all capital cost repayment obligations, the two cost components shall be weighted as follows:

(i) The conservation capital cost component shall be weighted with a thirty percent (30%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of maximum annual Table A Amounts as calculated in subdivision (f)(1) of this article by thirty percent (30%).

(ii) The transportation capital cost component shall be weighted with a seventy percent (70%) factor. The weighting shall be accomplished by multiplying each Urban Contractor's percentage of transportation capital cost component repayment obligations as calculated in subdivision (f)(2) of this article by seventy percent (70%).

(iii) A total, weighted capital cost percentage shall be calculated for each Urban Contractor by adding the weighted conservation capital cost component percentage to their weighted transportation capital cost component percentage.

(4) The total amount of the annual charges to be reduced to Urban Contractors in each year shall be allocated among them by multiplying the total amount of annual charges to be reduced to the Urban Contractors by the total, weighted capital cost percentages for each such Contractor. If the amount of the reduction to an Urban Contractor is in excess of that Contractor's payment obligation to the Department for that year, such excess shall be reallocated among the other Urban Contractors.

(5) In the case of a permanent transfer of urban Table A amounts, the proportionate share of annual charge reductions associated with that Table A amount shall be transferred with the Table A amount to the buying Contractor. In the case of an Table A amount transfer by either Santa Barbara County Flood Control and Water Conservation District or San Luis Obispo County Flood Control and Water Conservation District, the reductions in annual charges to that agency shall be allocated (a) on the basis of that Table A amount being retained by that agency which bears Coastal Branch Phase II transportation costs, (b) on the basis of that Table A amount being retained by that agency which does not bear Coastal Branch Phase II transportation costs, and (c) on the basis of the balance of that agency's Table A amount which also does not bear Coastal Branch Phase II transportation costs.

(g) Apportionment of Reductions Among Agricultural Contractors.

(1) Reductions in annual charges apportioned to Agricultural Contractors under subdivision (d) of this article shall be allocated among the Agricultural Contractors pursuant to this subdivision. The amount of reduction of annual charges for each Agricultural Contractor for the years 1997 through 2001 shall be based on each Agricultural Contractor's estimated proportionate share of the total project costs, excluding the variable operation, maintenance, power and replacement components of the Delta Water Charge and the Transportation Charge and also excluding off-aqueduct power charges, to be paid by all Agricultural Contractors for the years 1997 through 2035, calculated without taking into account this article. For purposes of these calculations, Kern County Water Agency's and Dudley Ridge Water District's estimated project costs shall not

include any costs associated with the 45,000 acre-feet of Annual Table A Amounts being permanently relinquished by those Contractors pursuant to subdivision (j) of Article 53. Also, for purposes of these calculations, an Agricultural Contractor's estimated project costs shall not be reduced by the transfer of any of the 130,000 acre-feet of Annual Table A Amounts provided for in subdivisions (a) through (i) of Article 53. The proportionate shares for 1997 through 2001 shall be calculated as follows:

(i) Each Agricultural Contractor's statement of charges received on July 1, 1994, shall be the initial basis for calculating the proportionate shares for the five years 1997 through 2001.

(ii) Each Agricultural Contractor's estimated capital and minimum components of the Delta Water Charge and the Transportation Charge (excluding off-aqueduct power charges) and Water Revenue Bond Surcharge shall be totaled for the years 1997 through 2035.

(iii) Kern County Water Agency and Dudley Ridge Water District totaled costs shall be reduced for the 45,000 acre-feet of annual Table A amount being permanently relinquished by them.

(iv) Any reductions in an Agricultural Contractor's totaled costs resulting from the transfer of any of the 130,000 acre-feet of annual Table A amount shall be re-added to that Contractor's costs.

(v) Each Agricultural Contractor's proportionate share shall be computed by dividing that Contractor's total costs by the total costs for all Agricultural Contractors determined pursuant to subparagraphs (ii), (iii) and (iv) above.

(2) The reductions in annual charges, for 1997 through 2001, shall be calculated using the method described in subdivision (g)(1) of this article.

(3) The allocation shall be recalculated using the same method described in subdivision (g)(1) of this article every five years beginning in 2002, if any Agricultural Contractor requests such a recalculation. Any recalculation shall be based on project cost data beginning with the year that the recalculation is to become effective through 2035.

(h) Agricultural Rate Management Trust Fund.

(1) Establishment. Through a trust agreement executed contemporaneously with this amendment, the State and the Agricultural Contractors that sign the Monterey Amendments shall establish the Agricultural Rate Management Trust Fund with a mutually agreed independent trustee.

(2) Separate Accounts. The trustee shall maintain within the trust fund a separate account for each Agricultural Contractor that signs the trust agreement to hold deposits made pursuant to this article.

(3) Deposits. Each Agricultural Contractor that signs the trust agreement shall deposit into such Contractor's account within the trust fund, at the same time as payments would otherwise be required by this contract to be made to the State, an amount equal to the amount by which such Contractor's charges under this contract have been reduced by reason of this article, until the balance in such Contractor's account within the trust fund is the same percentage of \$150,000,000 as such Contractor's percentage share of reductions made available to all Agricultural Contractors as specified in subdivision (g) of this article. In 2002 and every fifth year thereafter, the Agricultural Contractors will review the maximum accumulation in the trust fund (the "Cap") and determine whether the cap should be adjusted. However, the Cap shall not be reduced below an aggregate of \$150,000,000 for all Agricultural Contractor accounts.

(4) Trust Fund Disbursements.

(i) In any year in which the State's allocation of water to an Agricultural Contractor by April 15th of that year is less than one-hundred percent (100%) of the Contractor's requested annual Table A amount for that year, the trustee shall, to the extent there are funds in that Contractor's account, distribute to the State from such account for the benefit of that Contractor an amount equal to the percentage of the total of that Contractor's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum operation, maintenance, power and replacement components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of that Contractor's annual Table A amount for that year that was not allocated to it by the State by April 15th of that year.

(ii) In addition to the provisions of subdivision (h)(4)(i) of this article, if on April 15 of any year any of the irrigable land within the Tulare Lake Basin Water Storage District (Tulare) is flooded, and Tulare in writing requests the trustee to do so, the trustee shall, to the extent there are funds in Tulare's account, distribute to the State from such account for the benefit

of Tulare an amount equal to the percentage of the total of Tulare's statement of charges for that year, as redetermined by the State on or about May 15th of that year, for (a) the Delta Water Charge; (b) the capital cost and minimum components of the Transportation Charge (including off-aqueduct power charges); and (c) the water system revenue bond surcharge, that is equal to the percentage of the irrigable land within Tulare that is flooded on April 15.

(iii) Each Agricultural Contractor shall remain obligated to make payments to the State as required by other articles in this contract. Any amount to be disbursed pursuant to subdivisions (h)(4)(i) and (h)(4)(ii) shall be paid by the trustee to the State on July 1 of the year involved and shall be credited by the State toward any amounts owed by such respective Agricultural Contractor to the State as of that date. However, an Agricultural Contractor may direct the trustee to make the disbursement to that Agricultural Contractor which shall in turn make the payment to the State as required by other provisions of this contract. If the amount to be disbursed exceeds the amount owed to the State by such Contractor as of July 1, the excess shall be disbursed by the Trustee to the State at the time of and in payment of future obligations owed to the State by such Contractor. Alternatively, upon the request of such Contractor, all or part of the excess shall be paid by the trustee to that Contractor in reimbursement of prior payments by the Contractor to the State for that year.

(5) Payment of Supplemental Bills. In any year in which a supplemental bill has been submitted to an Agricultural Contractor pursuant to subdivision (c)(4) of this article, such supplemental bill shall be treated as reducing by an equal amount the obligation of such Contractor for that year to make payments into the Agricultural Rate Management Trust Fund. To the extent that such Contractor has already made payments to the trust fund in an amount in excess of such Contractor's reduced trust fund payment obligation, such Contractor may request the trustee to use the excess from the trust fund to pay the supplemental bill.

(6) Discharge of Payment Obligation. Each payment to the State by the trust fund shall discharge and satisfy the Agricultural Contractor's obligation to pay the amount of such payment to the State. No reimbursement of the trust fund by the Agricultural Contractor for such payments shall be required. However, each Agricultural Contractor shall continue to make deposits to the trust fund matching the amount of each year's reductions as provided in subdivision (d) of this article so long as the amount in that Contractor's account is less than its share of the Cap.

(7) Distribution of Funds in Excess of the Cap. Whenever accumulated funds (including interest) in an Agricultural Contractor's account in the trust fund exceed that Contractor's share of the Cap, or the estimated remaining payments the Contractor is required to make to the State prior to the end of the project

repayment period, that Contractor may direct the trustee to pay such excess to the Contractor.

(8) Termination of Trust Fund. At the end of the project repayment period, the Agricultural Rate Management Trust Fund shall be terminated and any balances remaining in the accounts for each of the Agricultural Contractors shall be disbursed to the respective Agricultural Contractors.

(i) **Definitions. For the purposes of this article, the following definitions will apply:**

(1) "Agricultural Contractor" shall mean the following agencies as they now exist or in any reorganized form:

- (i) County of Kings,
- (ii) Dudley Ridge Water District,
- (iii) Empire West Side Irrigation District,
- (iv) Kern County Water Agency for 848,130 acre-feet of its Table A amount,
- (v) Oak Flat Water District,
- (vi) Tulare Lake Basin Water Storage District.

(2) "Urban Contractor" shall mean every other agency having a long term water supply contract with the State as they exist as of the date of this amendment or in any reorganized form as well as Kern County Water Agency for 134,600 acre-feet of its Table A amount.

(j) **Except as provided in subdivisions (c)(4) and (c)(5),** this article shall not be interpreted to result in any greater State authority to charge the Contractors than exists under provisions of this contract other than this article.

EXHIBIT B

61. FINANCIAL ACCOUNTS AND ACTIVITIES

(a) General Operating Account

(1) The State shall maintain a General Operating Account to provide the moneys needed for the following purposes:

(i) To pay or provide for the payment of System costs which are reimbursable by one or more Contractors under their respective Water Supply Contracts in the event System revenues available for such payment are insufficient for such purpose; or

(ii) To pay or provide for the payment of System costs for any System purpose in the event of a System emergency as defined in Article 61(a)(1)(iii).

(iii) A System Emergency, as used in this Article 61(a)(1)(ii) shall mean an immediate, urgent, critical, unexpected, or impending situation that, in the judgment of the Director may cause or pose a risk of causing injury, loss of life, damage to the property, impairment of the financial condition, and/or interference with the normal activities of the System which requires immediate attention and remedial action.

(2) The maximum amount in the General Operating Account shall be set, adjusted and funded as follows:

(i) Upon the Contract Extension Amendment Effective Date, the maximum amount shall be \$150 million.

(ii) On or before the first September 1 occurring five (5) years after the Contract Extension Amendment Effective Date and every five (5) years thereafter, the State shall present a business case analysis of the maximum amount reasonably necessary or appropriate to be maintained in the General Operating Account, including an evaluation of the maximum amount and its relationship to the business risks associated with the System cash flow, to the SWRDS Finance Committee for recommendation to the Director regarding a General Operating Account maximum amount

adjustment, provided that the maximum amount shall not be less than \$150 million.

(iii) To fund the General Operating Account to its maximum amount, the Director may, in his or her discretion, transfer to the General Operating Account (1) amounts determined to be available pursuant to Article 51(e); (2) earnings from the investment of amounts in the General Operating Account; (3) amounts in the SWRDS Reinvestment Account; and (4) amounts in the SWRDS Support Account.

(iv) If the Director determines to decrease the maximum amount pursuant to Article 61(a)(2)(ii), or the maximum amount is otherwise exceeded, the excess amount in the General Operating Account shall be transferred to the SWRDS Reinvestment Account.

(v) The State shall replenish the amounts used from the General Operating Account (1) through charges to the Contractors to the extent the Contractors are obligated to reimburse the State for the costs paid with such amounts and (2) from the SWRDS Support Account or other available revenues (including the sources described in subparagraph (iii) of this Article 61(a)(2)) for costs not reimbursable by the Contractors under their respective Water Supply Contracts.

(vi) General Operating Account investment earnings shall be used to fund the General Operating Account to its maximum amount or, in the Director's discretion, transferred to the SWRDS Support Account and/or the SWRDS Reinvestment Account.

(3) The State shall prepare monthly reports on the balance in and use of the General Operating Account for the Director, and shall provide those reports to the SWRDS Finance Committee. The SWRDS Finance Committee may periodically review reporting frequency and make recommendations to the Director regarding reporting frequency.

(b) SWRDS Reinvestment Account

(1) Commencing with the Contract Extension Amendment Effective Date, the State shall establish and maintain a SWRDS Reinvestment Account to provide a continuing source of investment revenue to provide amounts to be transferred to or deposited in the General Operating Account, the SWRDS Reinvestment Account, and the SWRDS Support Account.

(2) To fund the SWRDS Reinvestment Account, the Director may, in his or her discretion, transfer to the SWRDS Reinvestment Account (i) amounts determined to be available pursuant to Article 51(e), (ii) earnings from the investment of amounts in the SWRDS Reinvestment Account, (iii) payments by

the Contractors for capital costs funded from the SWRDS Reinvestment Account, (iv) amounts from the SWRDS Support Account, and (v) amounts from the General Operating Account.

(3) Amounts in the SWRDS Reinvestment Account may be used and/or invested as follows:

(i) To pay capital costs of Project Facilities to the extent those costs are reimbursable by one or more Contractors under their respective Water Supply Contracts. Such capital costs shall be reimbursed to the State in accordance with item 5 of this subparagraph (b) below.

(ii) To pay capital costs of Project Facilities pending reimbursement of the State with the proceeds of revenue bonds issued by the State; and

(iii) To make temporary investments in accordance with the statutory limitations on such investments.

(4) The State shall prepare regular reports on the SWRDS Reinvestment Account for the Director and shall provide those reports to the SWRDS Finance Committee. The State shall consult with the SWRDS Finance Committee about the investments and activities to be funded from the SWRDS Reinvestment Account.

(5) *Amortization of Costs Financed with Amounts in the SWRDS Reinvestment Account.* Charges to amortize Project Facility Capital Costs paid with amounts from the SWRDS Reinvestment Account shall return to the State, in equal annual amounts over an amortization period determined by the State, the amount of each such cost together with an interest charge on the unamortized balance thereof.

(i) The length of such amortization periods may be from ten (10) to fifty (50) years, *provided* that if the capital asset has an Economic Useful Life of less than ten (10) years, the amortization period may be a comparable period of less than ten (10) years.

(ii) The interest charge shall be at a rate equal to the market interest rate at the time the cost is Incurred on municipal Revenue Bonds with the following characteristics:

(a) the same rating as the rating on Revenue Bonds issued by the State to finance Project Facilities, and

(b) the same term as the length of the amortization period, all as determined by the State.

(iii) For the purposes of this subdivision (b)(5), the State may aggregate the Capital Costs of each Project Facility Incurred during each calendar year and determine a composite interest rate and a composite amortization period applicable to the amortization of such costs.

(iv) The amortization charges relating to the costs Incurred during each calendar year shall commence the calendar year starting one year after the end of the calendar year in which such costs were Incurred, and the amount to be amortized shall include capitalized interest for the period from the date or dates the costs are Incurred to the date of commencement of amortization.

(c) SWRDS Support Account

(1) Commencing with the Contract Extension Amendment Effective Date, the State shall establish and maintain a SWRDS Support Account to provide a source of funds to pay System costs that are not chargeable to the Contractors under their respective Water Supply Contracts and for the payment of which there are no other monies available.

(2) To fund the SWRDS Support Account, the Director may, in his or her discretion, transfer to the SWRDS Support Account (i) amounts determined to be available pursuant to Article 51(e); (ii) amounts in the SWRDS Reinvestment Account, (iii) investment earnings in the General Operating Account; (iv) earnings from the investment of amounts in the SWRDS Support Account; and (v) other available revenues. The State shall not charge the Agency to replenish the SWRDS Support Account for costs not otherwise chargeable to the Agency under this contract.

(3) If the State is reimbursed or other amounts are appropriated and received for a cost paid from the SWRDS Support Account, the State shall deposit the amount reimbursed or received in the SWRDS Support Account.

(4) The State shall prepare regular reports on the SWRDS Support Account for the Director and shall provide those reports to the SWRDS Finance

Committee. The State shall consult with the SWRDS Finance Committee about the investments and activities to be funded from the SWRDS Support Account.

(d) System Financial Activity Report and Reporting Principles

(1) The State shall prepare and distribute quarterly a System Financial Activity Report that contains the following information:

(i) By fund or account, the activity in the following funds and accounts: the General Operating Account, the SWRDS Support Account, the SWRDS Reinvestment Account, the 51(e) Sub-Account of the Systems Revenue Account, the Davis-Dolwig Fund, and the State Water Facilities Capital Account, and the activity with respect to suspended costs.

(ii) The data in the System Financial Activity Report shall be auditable, which includes an audit trail from the costing ledger (currently the Utility Cost Accounting Billing System, as of the Contract Extension Amendment Effective Date) to the general ledger (currently SAP, as of the Contract Extension Amendment Effective Date) or the Bulletin 132 estimates to the System Financial Activity Report.

(2) Appendix B, entitled System Reporting Principles, contains principles and guidelines which shall be followed, to the extent applicable, in the preparation of System financial reports and financial management reports.

(e) State Water Resources Development System Finance Committee

(1) The State shall establish a joint State and Contractors finance committee, which shall be referred to as the State Water Resources Development System Finance Committee or SWRDS Finance Committee. The membership of the SWRDS Finance Committee shall include both representatives from the State and the Contractors.

(2) The primary purpose of the SWRDS Finance Committee shall be to make recommendations to the Director concerning the financial policies of the System. The State and the Contractors shall describe the scope of the SWRDS Finance Committee in a charter mutually agreeable to the State and the Contractors.

(f) Cost Recovery

In general, the State should seek reimbursement for all System costs from the appropriate customers and users of System facilities. With respect to those System costs that are reimbursable by the Contractors, the State should allocate

financial responsibility for such costs in a manner that is both lawful and equitable, and which endeavors to recover such costs from the appropriate Contractors. If the State proposes to not charge any Contractor the full amount that the State is entitled to charge the Contractor under the contract, the State shall present a written proposal to the SWRDS Finance Committee for purposes of developing a recommendation to the Director regarding the proposal. The State shall submit such proposal in writing to the SWRDS Finance Committee 90 days in advance of the Director issuing any decision and within such 90 day period the SWRDS Finance Committee shall provide the Director with a recommendation regarding such proposal. Such proposals shall comply with the structure set out in the SWRDS Finance Committee charter referenced in Article 61(e)(2).

EXHIBIT C

APPENDIX B

SYSTEM REPORTING PRINCIPLES

- A. During the term of the water supply contracts, it is likely that financial reports and financial management reports will change in scope, nature, and frequency. Regardless of the exact reports used, such reports shall follow the below principles and guidelines to the extent applicable.
1. Principle 1: Financial reporting will be generated from the general ledger or data warehouse of the financial information system (system of record), such as SAP. The financial system of record is the authoritative source for financial reporting data values in a system. To ensure data integrity, there must be one, and only one, system of record for financial reporting values.
 2. Principle 2: Financial reporting is not limited to annual financial statements but will be developed for regular reporting periods.
 3. Principle 3: Financial management reporting generated from other financial systems, such as Utility Cost Accounting Billing System (UCABS), will identify and analyze significant variances from prior years or budgets.
 4. Principle 4: Financial reporting and financial management reporting will identify unusual items and exceptions, and these items will be documented, reviewed, and resolved by management.
 5. Principle 5: DWR will use standardized System-wide business rules and utilize a centralized financial system, such as SAP, UCABS, or other system, to provide controls/validations to ensure data integrity and reliable reporting.
 6. Principle 6: DWR will use standardized data integrity rules in the development and publication of reports, including but not limited to the following:
 - (1) Data integrity refers to the accuracy and consistency of data stored in a database, data warehouse, data mart or other construct.
 - (2) Data integrity processes verify that data has remained unaltered in transit from creation to reception or remains unaltered in transit from one system to the next. Data used outside of the Enterprise Resource Planning (ERP) systems to meet the reporting needs of Program will undergo any number of operations in support of decision-making, such as capture, storage, retrieval, update and transfer. It is important to have confidence that during these operations, the data will be kept free from corruption,

modification and remain unaltered.

- (3) Data with “integrity” has a complete or whole structure. Data values are standardized according to a data model and/or data type. All characteristics of the data must be correct – including business rules, relations, dates, definitions and lineage – for data to be complete.
- (4) Data integrity is imposed within an ERP database when it is created and is authenticated through the ongoing use of error checking and validation routines.
- (5) Data integrity state or condition is to be measured by the validity and reliability of the data values.
- (6) Data integrity service and security maintains information exactly as it was input, and is auditable to affirm its reliability.

The SWRDS Finance Committee is charged with providing financial policy recommendations to the Director, and the Director has final discretion on whether or not to accept the recommendations. While the SWRDS Finance Committee is not charged with reviewing the content of financial reports, timely and accurate financial reporting and financial management reporting provides technical committees access to useful information that can be used to formulate proposals on financial policy matters that may be brought to the SWRDS Finance Committee.

City of Calistoga

MEMORANDUM OF UNDERSTANDING

Between

CITY OF CALISTOGA

And

**CALISTOGA PUBLIC EMPLOYEES'
ASSOCIATION**

JANUARY 1, 2019 THROUGH DECEMBER 31, 2021

Approved by Resolution No. 2019-021

**2019 - MOU
City of Calistoga/CPEA**

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MEMORANDUM OF UNDERSTANDING
Between
CITY OF CALISTOGA
AND
CALISTOGA PUBLIC EMPLOYEES ASSOCIATION

This Memorandum of Understanding is made and entered into between the CITY OF CALISTOGA, hereinafter referred to as "CITY" and CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION, hereinafter referred to as "ASSOCIATION", an unaffiliated, independent and formally recognized employee ASSOCIATION, pursuant to the provisions of the Meyer-Milias-Brown Act (Government Code Section 3500 et seq.).

The parties agree that this Memorandum of Understanding (MOU) shall be submitted to the City Council of the City of Calistoga with the joint recommendation of the designated representatives of the parties that body resolve to accept its terms and conditions and take such other and additional action as may be necessary to implement the provisions.

CITY agrees to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with ASSOCIATION, and shall consider fully such presentations as are made by ASSOCIATION on behalf of its members prior to arriving at a determination of policy or course of action.

The parties have met and conferred in good faith through their designated representatives concerning those matters set forth in Government Code Section 3504 and have reached an agreement thereon as set forth below.

The parties agree as follows:

Article 1 - Recognition

The CITY recognizes the ASSOCIATION as the exclusive representative on behalf of employees occupying the full time job classifications listed in Exhibit A.

Such representation being subject to and qualified by employee rights under applicable State and Federal law to be represented by the organization of their choice.

Article 2 – City Rights

Except as limited by the specific and express terms of this MOU, CITY hereby retains and reserves unto itself all rights, powers, authority, duty and responsibilities confirmed on and vested in it by the laws and Constitution of the State of California, the Municipal Code of the City of Calistoga, and/or the laws and Constitution of the United States of America. Regardless of any provision contained in the MOU or which may be implied from this MOU, CITY shall retain and shall have the right to exercise the following exclusive rights, which include but are not limited to the following:

A. Hire and Fire;

- B. Determine the mission of its constituent departments, divisions, or commissions, and boards;
- C. Set standards of service and municipal fees and charges;
- D. Determine the procedures and standards of selection for employment, assignment, transfer and promotion of applicants and employees, provided in the case of employees that the exercise of such right shall not infringe on any rights employees have under this MOU;
- E. Direct its employees;
- F. Discharge or suspend employees for just cause and take other disciplinary actions against its employees as set forth herein;
- G. Relieve its employees from duty because of lack of work or other legitimate reasons;
- H. Maintain the efficiency of governmental operations;
- I. Determine the methods, means and personnel by which governmental operations are to be conducted;
- J. Determine and re-determine job content and job classifications;
- K. Contract out any work which is now being performed by employees of the CITY or which shall be performed in the future by employees of CITY, provided this only occurs in those situations where the tasks cannot be accomplished by current ASSOCIATION members as efficiently, economically, and expediently as can be achieved by such contracting out, provided that CITY shall make every reasonable effort to place service requiring similar skills as the work performed by the employee when displaced by the contracting out and which requires minimal training to afford the employee opportunity to adequately perform the new position;
- L. Take all necessary actions to carry out the mission of the CITY, its constituent departments, divisions, or commissions and boards in cases of emergencies;
- M. Exercise complete control and discretion over its organization and the technology of performing its work.

Article 3 – Employee/Association Rights

Employees of the CITY shall have the right to form, join and participate in the activities of an employee organization of their own choosing for the purpose of representation on matters of employer-employee relations including, but not limited to wages, hours, and other terms and conditions of employment. Employees of CITY shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the CITY. Should any employee exercise that right, the employee organization shall be given advance notification prior to the implementation of the results of such self-representation.

Employees designated as confidential may not be officers of the Association. Further, ASSOCIATION members may not ask a designated confidential employee for information deemed confidential by the CITY.

The CITY will grant to designated employees release time to participate in the Labor/Management Committee meetings, Association activities in accordance with law or Association activities with the approval of the City Manager.

Article 4 – Access of Facilities

All ASSOCIATION business will be conducted by employees and ASSOCIATION representatives outside of established working hours, and CITY facilities will not be used for the conduct of ASSOCIATION business, unless permission is granted before in writing by the City Manager. Nothing herein shall be construed to prevent an ASSOCIATION representative or an employee from contacting the City Manager or other management representatives regarding personnel related matters during working hours.

The authorized ASSOCIATION Business Agent shall be given access to work locations during working hours, provided that prior to visiting any work location the ASSOCIATION representative notifies CITY.

Article 5 – No Discrimination

There shall be no discrimination based on race, creed, color, national origin, sex, ancestry, marital status, pregnancy, sexual orientation, or legitimate Association activities against any employee or applicant for employment by the ASSOCIATION or by the CITY or by anyone employed by the CITY; to the extent prohibited by applicable state and federal law, there shall be no discrimination because of age. There shall be no discrimination against any disabled person solely because of such disability; however the disabled person must be able to perform the essential functions established for the classification.

Article 6 – Agency Shop

The ASSOCIATION agrees that it has a duty to provide fair and non-discriminatory representation to everyone in the Bargaining Unit regardless of whether they are members of ASSOCIATION or not.

This Agency Shop provision shall be implemented in accordance with Government Code Section 3502.5, except as noted below.

All members of the Bargaining Unit, as a condition of employment shall:

- A. Become and remain a member of ASSOCIATION; or
- B. Pay to ASSOCIATION an Agency Shop fee in an amount that does not exceed an amount that may be lawfully collected under applicable laws. It shall be the sole responsibility of ASSOCIATION to determine an agency shop fee which meets the criteria above, or

C. Do both of the following:

1. Execute a written declaration that the employee is a member of a bona fide religion, body or sect which has historically held an objection to joining or financially supporting any public employee organization as a condition of employment; and
2. Pay a sum, through payroll deduction, equal to the agency shop fee described above to a non-religious, non-labor, charitable fund chosen by the employee from among the following charities:
 - a. Napa Women's Shelter
 - b. Napa County Chapter of the Red Cross
 - c. American Cancer Society

The ASSOCIATION shall provide the City Manager with a copy of the ASSOCIATION agency fee procedure and each revision thereof, and shall provide notice of said procedure to bargaining unit members as required by all applicable laws. Failure by an employee to invoke the said procedure within one (1) month after actual notice shall be a waiver by the employee of his/her right to contest the amount of the agency fee, unless otherwise required by the law.

Annually, the ASSOCIATION shall provide the City Manager with copies of the financial report required pursuant to the Labor Management Disclosure Act of 1959. Such report shall be available to employees in the unit within sixty (60) days after the end of the fiscal year.

Such dues or Agency Shop fees shall, as a condition of continued employment, be deducted from the Bargaining Unit Member's paycheck on a monthly basis starting the first day of the month following the completion of thirty (30) days of employment

The Bargaining Unit Member's earnings must be sufficient after required deductions are made to cover the amount of the dues or agency shop fees. When a Bargaining Unit Member is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. All required deductions have priority over ASSOCIATION dues and agency shop fees.

The CITY shall provide the above information concerning the fair share provisions, including the fair share ASSOCIATION membership form, to all new employees who become covered by this Agency Shop Agreement after the effective date of the Agency Shop Agreement.

The Agency Shop provision may be rescinded by a majority vote of all the Employees in the Bargaining Unit, provided that:

- A. A request for such a vote is supported by a petition containing the signatures of at least 30% of the Employees in the Bargaining Unit;
- B. The vote is by secret ballot;

C. A vote may be taken at any time during the term of the MOU.

The ASSOCIATION shall provide the CITY with a copy of the ASSOCIATION Hudson Procedure for the determination and protest of its agency shop fees. The ASSOCIATION shall provide a copy of said Hudson Procedure to every fee payer covered by this Agency Shop Agreement.

The ASSOCIATION shall indemnify, defend, and hold the CITY harmless against any and all claims, demands, suites, orders or judgments or other forms of liability that arise out of or by reason of this Agency Shop Agreement, or action taken or not taken by the CITY under this Agency Shop Agreement. This includes, but is not limited to, the CITY Attorneys' fees and costs. The provisions of this Agency Shop Agreement shall not be subject to the grievance procedure.

In no event shall the CITY be required to pay from its own funds ASSOCIATION dues, service fees, or charitable contributions, which the Employee was obligated to pay, but failed to pay, regardless of the reasons.

The CITY shall deduct approved ASSOCIATION sponsored insurance programs from the employee's pay in conformity with State and CITY regulations. ASSOCIATION shall provide CITY with authorization for such deductions, and said authorizations shall clearly state the terms and conditions for implementation of deductions and conditions for cancellation of deductions.

Article 7 – Severability

If any provisions of the application or any provisions of this MOU as implemented should be rendered or declared invalid by any final court action or decree, or by reason of any preemptive legislation, the remaining sections of this MOU shall remain in full force and effect for the duration of said MOU.

This MOU is subject to all current and future applicable Federal, State and local laws.

All CITY ordinances, rules and regulations and policies shall be subject to the appropriate revisions, amendments, and deletions necessary to conform to the purpose, intent and application of the Articles of this MOU.

Article 8 – Term

Upon final ratification and approval by the City Council the term of this agreement shall be in effect and shall remain in full force from January 1, 2019 through December 31, 2021.

Article 9 – Successor MOU

- A. On or after September 1, 2021 either party hereto may, by written request of the other, initiate negotiations for a successor MOU. Upon receipt of written notice and/or proposals, negotiations shall begin no later than thirty (30) days thereafter.

Article 10 – MOU, Modifications and Waivers

This MOU sets forth the full and entire MOU of the parties regarding the matters set forth herein, and any other prior or existing understanding or MOU, or side letter agreement over these matters between the parties, whether formal or informal, are hereby superseded or terminated in their entirety.

Except as specifically provided herein, it is agreed and understood that the parties hereto shall not be required, but do reserve the right upon mutual agreement, to negotiate with respect to any subject or matter covered herein or with respect to any other matters within the scope of representation, during the term of this MOU.

No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed by all parties hereto.

The waiver of any breach, term or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

Article 11 – Authorized Agents

For the purposes of administering the terms and provisions of this MOU:

- A. CITY'S principal authorized representative shall be the City Manager or his/her duly authorized representative (address: 1232 Washington Street, Calistoga, CA, 94515)
- B. The Association's principal authorized agent shall be the President of the Calistoga Public Employees' Association, (address: 1232 Washington Street, Calistoga, CA 94515)

Article 12 – Concerted Activities

It is agreed that there will be no strike, work stoppage, slowdown, picketing or refusal or failure to fully and faithfully perform job functions and responsibilities, or other interference with the operations of the CITY by the ASSOCIATION or by its officers, agents, or members during the term of this MOU, including the recognition of picket lines or additional compliance with the request of other labor organizations to engage in such activity.

ASSOCIATION recognizes the duty and obligation of its representatives to comply with the provisions of this MOU and to make every effort toward inducing all employees to do so.

In the event of a strike, work stoppage, slowdown, or other interference with the operation of the CITY by employees who are represented by the ASSOCIATION, the ASSOCIATION agrees in good faith to take all necessary steps to cause those employees to cease such action.

It is agreed that any employee violating this Article may be subject to discipline up to and including termination by the CITY.

Article 13 – Salary Adjustments

It is mutually agreed that the City of Calistoga may have limited financial ability to pay future salary increases, and such ability is entirely dependent upon the economic conditions that prevail in the community, financial impacts related to critical emergency responses, and legislative actions of the State of California.

Recognizing that approximately two-thirds of all General Fund revenue received by the City is a result of Transient Occupancy Tax Collections, and that these tax revenues are critically influenced by emergency situations including wildfire, flood or other major disaster, the following is applied:

During the term of this agreement, in the event there is a 10% decline in City Transient Occupancy Tax Revenue, or should the City be required to exceed 10% of the General Fund Expenditure Budget excl. CIP expenditures on emergency responses related to a major disaster, any remaining subsequent salary increase may be suspended or cancelled following a City Council-declared emergency. In the event of salary increase cancellation, the CPEA shall have the option to re-open negotiations on salary only.

- A. Effective January 1, 2019, all bargaining unit salaries (excluding 'Y' rated employees) shall be increased by four percent (4%) as shown in Exhibit A.

Effective January 1, 2019, Y-Rated positions will receive a one-time bonus of four percent (4%) of their base annual salary, as shown in Exhibit B. The one-time bonus is reportable to CalPERS for Classic Members only.

The following classifications are Y-Rated:

- Accounting Assistant
- Administrative Services Technician
- Administrative Assistant
- Assistant Engineer
- Associate Civil Engineer
- Building Inspector
- Maintenance Technician I and II
- Senior Maintenance Technician
- Senior Accounting Assistant
- Senior Plant Operator

Effective January 1, 2020, all bargaining unit salaries (including 'Y' rated employees) shall be increased by three percent (3%) as shown in Exhibit A and B.

Effective January 1, 2021 all bargaining unit salaries (including 'Y' rated employees) shall be increased by three percent (3%) as shown in Exhibit A and B.

- B. Monthly salaries shall be provided in accordance with ranges established for each position listed in Exhibit A (non-Y-Rated) and Exhibit B, (Y-Rated).
- C. Any employee demoted for cause shall have his/her salary reduced commensurate with the reduction in job classification and the responsibilities attendant thereon. Any such reductions are subject to the meet and confer process prior to implementation.
- D. Employees may “flex” to the next higher level upon approval by the City Manager based upon demonstrated work performance and enhanced value to the organization and as provided by meeting all of the following criteria: 1) the department head must provide written recommendation for progression to the next higher level; 2) employee must meet the minimum qualification as established for the higher level; 3) the employee must have a current performance evaluation satisfactory rating in the current position and must not have been on a performance improvement plan within the prior 24 months or have a record of employee discipline in the prior 24 months; and 4) the City Manager must make a determination that the current year budget has provided funds to cover the increased cost of upgrading this position.

If an employee is granted a higher level position within this flexible staffing provision, within a six (6) months' probation period an employee may be demoted to their former range and step as provided in the Personnel Manual Section 8.07 if the employee is not performing at the higher level as determined by the Department Head or by mutual agreement to return to their former position.

Article 14 – Service Longevity Pay

The CITY shall provide a lump sum Service Longevity Pay in the following manner.

- A. On the completion of five (5) years of continuous service from the initial anniversary date with the CITY, the CITY shall provide the employee with a one-time lump sum Service Longevity Pay equivalent to 1.5% of the employee's annual base salary.
- B. On the completion of ten (10) years of continuous service from the initial anniversary date with the CITY, the CITY shall provide the employee with a one-time lump sum Service Longevity Pay equivalent to 2% of the employee's annual base salary.
- C. On the completion of fifteen (15) years of continuous service from the initial anniversary date with the CITY, the CITY shall provide the employee with a one-time lump sum Service Longevity Pay equivalent to 2% of the employee's annual base salary.
- D. On the completion of twenty (20) years of continuous service from the initial anniversary date with the CITY, the CITY shall provide the employee with a one-time lump sum Service Longevity Pay equivalent to 2.5% of the employee's annual base salary.
- E. On the completion of twenty five (25) years of continuous service from the initial anniversary date with the CITY, the CITY shall provide the employee with a one-

time lump sum Service Longevity Pay equivalent to 2.5% of the employee's annual base salary.

- F. After the twenty-fifth (25th) year of service with the City, and upon completion of each fifth year of continuous service from the initial anniversary date with the City, the City shall provide the employee with a one-time lump sum Service Longevity Pay equivalent to 2.5% of the employee's annual base salary.
- G. Continuous service is defined as years from the anniversary date of initial full-time hire of the employee.

Article 15 – Incentive Pays

- A. The CITY will provide a \$100.00 per month differential to employees in a position approved by the City Manager and who have passed the CITY selected proficiency test for their use of Spanish on behalf of the CITY.
- B. For Plant Operator I, II and III and Maintenance Technician I, II and III positions within water treatment, wastewater treatment, and water distribution, the City shall provide a 2.5% of base salary incentive for each approved Water or Wastewater Operator's certification and, effective January 1, 2016, Water Distribution certification obtained that are above the minimum required for each position. The maximum shall be 5% of base pay.
- C. Any employee currently receiving certification pay that is not required by the State or required as a condition of City employment shall suffer no loss. Effective January 1, 2016 employees not required by the State or required to obtain a certification as a condition of City employment shall not be eligible for certification pay.

For example, a Plant Operator II is required to have a minimum certification of a Water II and Wastewater II. If the Plant Operator II has a Water III Certification, he/she will receive a 2.5% incentive and an additional 2.5% for a Wastewater III Certification. Eligibility for this incentive pay shall be determined by the Director of Public Works and approved by the City Manager.

- D. The CITY will provide a \$150.00 month differential to employees who obtain and maintain an Applicator's License, Class A License, or a Lab Analyst Certification. Employees must actively use this license or certificate in the course of work and shall have a direct benefit to the CITY. Only one employee as determined by the department head may receive the certification pay for each of the different licenses.

If a Senior Plant Operator chooses to obtain a Lab Analyst certification, he/she may be eligible for a \$150.00 monthly differential at the Department Head's discretion.

Article 16 – Work Schedule

- A. This Article is intended to define the normal hours of work and shall not be construed as a guarantee of work per day or per week, or of days of work per week.

- B. Workday: The normal workday shall be eight (8) hours of work in a twenty-four consecutive hour period except in case of emergencies. 8:00 a.m. is recognized as the start of a normal workday.
- C. Work shift: Employees shall be scheduled to work on regular work shifts having regular starting and quitting time. Call-outs or overtime does not constitute a change in work shift.
- D. Workweek: For existing bargaining unit employees, Monday is recognized as the first day of a normal workweek except in cases of emergencies or at the specific request of an employee and upon approval of the employee's direct supervisor and department head. Nothing herein shall be construed to eliminate currently established irregular work schedules of any permanent full-time positions. Employees who are assigned weekend shift work (Saturday, Sunday, or both) shall receive Overtime for any time worked in excess of 40 hours in a week.
- E. Workweek: For bargaining unit employees hired after January 1, 2016, the normal workweek shall be five (5) workdays and two (2) consecutive days of rest in a seven (7) consecutive day period. This may include working on weekends if deemed necessary for proper operations of City facilities and programs as determined by the City Manager and approved by the department head. Employees who are assigned weekend shift work (Saturday, Sunday or both), shall receive a five (5%) shift differential to the base pay for each day worked.
- F. Administrative Relief: Changes in the work schedule may be made on an individual basis for each employee, but must be mutually agreed upon by the employee, the employee's direct supervisor and department head.

Article 17 – Stand-By

- A. Should CITY call back any full-time employee, after his normal working hours to perform work, CITY shall pay the employee time and one-half (1-1/2) for all hours actually worked, but in no event shall employee receive less than a minimum of two (2) hours' time and one-half pay regardless of time actually worked as a result of being called back to perform services for CITY.
- B. Stand-by shall be mandatory for all qualified personnel.
- C. Stand-by scheduling may be modified by the department head to accommodate personnel availability and departmental needs.
- D. Stand-by employees shall receive a minimum compensation for being on stand-by, even when not required to perform work as a result thereof. Such compensation shall be straight-time wages in the amount of one (1) hour per workday, three (3) hours for Fridays, effective upon adoption of this memorandum of understanding, and four (4) hours per weekend day or holiday.
- E. Plant Operators who are on stand-by will receive one hour of pay for any wake up or any call even if they did not need to respond. If there is a second call during that one

(1) hour period no additional premium would be due. If, in the event there are five (5) calls and they are (only an example) one and one half hours apart, there shall be a premium call out for each one. This will not have any impact on the compensation the on-call person receives for being on stand-by.

Article 18 - Holidays

- A. Each employee in a classification represented by this MOU shall be allowed the following holidays with full pay:

New Year's Day	January 1
Martin Luther King's Birthday	Third Monday in January
Presidents Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving Day	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

- B. Whenever New Year's Day, Independence Day, Christmas Eve or Christmas Day falls on a Saturday or Sunday, the Friday preceding or the Monday following, respectively, shall be a holiday.
- C. Holiday pay shall be at the rate of one and one-half (1-1/2) times the hourly base rate of pay, or time and one-half (1-1/2) compensatory time off, for those employees who work a normal work day on any of the normal recognized holidays. It will be the employee's option to receive pay or compensatory time off.
- D. Employees shall be granted two (2) floating holidays per year, which may be taken at a time mutually agreeable to the employee and supervisor. Unused holiday time may not be carried over into the following year. Employees hired between May 1 and August 31 will be credited with 12 hours of holiday time for that year and employees hired between September 1 and December 31 will be credited with 8 hours of holiday time. Employees leaving CITY service between January 1 and April 30 will be required to repay the CITY for 12 hours and those leaving CITY service between May 1 and August 31 will be required to repay the CITY for 8 hours.

Article 19 – Vacation Leave

- A. Every full-time permanent employee represented by this MOU shall accumulate vacation as follows:

Year 1 through Year 3	10 Days (80 Hours)
Beginning Year 4 through Year 6	15 Days (120 Hours)
Year 7 and thereafter	20 days (160 Hours)

- B. Vacation earned during the first six (6) months of employment cannot be taken until completion of probationary period.
- C. Employees shall not earn vacation once their accrued vacation balance has reached three (3) times their annual maximum vacation accumulation.
- D. Employees who have exceeded the maximum shall again begin to earn vacation when their balance is reduced below their maximum.
- E. No employee shall be permitted to work for compensation for CITY in any capacity during the time of his paid vacation from City services.
- F. Bargaining unit employees who separate from City employment, unless discharged from City services during their first six months of employment shall be granted all accumulated vacation or shall be paid at his/her rate of compensation applicable at the time of separation. Because employees seldom terminate on the final day of a month, the following method will provide for equitable payment for vacation earned during the month of termination. If an employee terminates on a day falling on the first through the fifteenth day of a month the employee shall receive credit for one-half the month's accrual; if an employee terminates on a day falling on the sixteenth through thirty-first day of the month, the employee shall receive full credit for the vacation accrual for the month.
- G. Employee requests for vacation leave shall be submitted to Department Head or City Manager at least thirty (30) days in advance of the starting day of requested leave.
- H. Each employee shall receive monthly a copy of his/her compensatory time, sick leave, and vacation leave, both accrued and used.

Article 20 – Sick Leave

- A. Every full-time employee represented by this MOU shall earn sick leave on the basis of one (1) eight-hour day for each month of service, with unlimited accumulation thereof.
 - 1. At any time after the completion of the fifth (5th) year of service, based on the anniversary date of initial hire, CITY may purchase from each employee covered hereunder, at the employee's discretion, all but 120 hours so accumulated at the rate of twenty-five percent (25%) of the covered employee's then existing wage.
 - 2. At each employee's option, said buy-out may occur earlier than set forth hereinabove, so long as the buy-out occurs on or about the anniversary date of initial hire and there remains a minimum sick leave bank of 120 accumulated hours.
 - 3. Employees who are absent without pay for any reason for more than ten (10) working days during a calendar month shall not accumulate sick leave for that month.

4. If an employee's employment is terminated for any reason, there will be deducted from the final check the amount of sick leave taken during employment with CITY in excess of the amount accrued.
- B. The Department Head and City Manager may require a medical examination by a licensed physician of any employee absent on account of illness.
- C. Sick leave means authorized absence from duty of an employee because of illness, injury, and exposure to contagious disease, or hospitalization. Although normal pregnancy and confinement is not to be construed as a reason for sick leave, pregnancy related illnesses or pregnancy related illness hospitalization shall be treated as any other illness or confinement.
- D. A former full-time employee who is reappointed to CITY service shall not be entitled to have restored to his/her credit any sick leave balance remaining at the time of his/her separation from CITY service.
- E. Whenever any full-time employee is compelled to be absent from duty by reason of the death or critical illness, where death appears imminent, of his father, mother, brother, sister, wife, husband, or child or the illness of a child, he shall be entitled to be absent with pay chargeable to sick leave for not more than forty working hours.
- F. Any employee requesting sick leave shall furnish a certificate issued by a licensed physician, or other satisfactory proof of eligibility for sick leave, upon the request of the Department Head. Further, any earned sick day taken on either side of a holiday, or for more than three (3) consecutive days, will require a medical certificate in support thereof, and employee shall supply such certificate upon return to work, unless, at the discretion of the Department Head, such certificate is waived prior to the employee's return to work.
- G. Upon retirement, CITY will buy back any remaining unused days at the following rate: all such accumulated days shall be multiplied by twenty-five percent (25%) of the employee's then existing daily wage rate.
- H. CITY will provide sickness and disability insurance for each full-time employee covered by this MOU, enabling those employees who qualify to receive payments of up to One Thousand Dollars (\$1,000) per week for a period of up to one hundred eighty days (180).
- I. No employee shall feign illness or injury for the purpose of remaining away from scheduled duty assignments. Should such feigning of illness or injury occur, disciplinary action would be taken, up to and including dismissal from CITY employment.
- J. Employees have the option of taking a maximum of up to six (6) eight-hour days sick leave each year for "personal leave" or "family care" leave days.

Article 21- Bereavement Leave

- A. Employees may have three (3) eight-hour workdays leave of absence for each death in their immediate family for the purpose of bereavement and for the arranging of, and attendance at, the funeral. Immediate family means spouse, parent, grandparent, step-parent, child, step-child, brother, or sister.
- B. If an Employee must attend a funeral more than five hundred (500) miles from the City, or if the death is to a member of the Employees extended family, then the Employee has the option to use up to three (3) eight-hour days of sick leave from his/her current sick leave balance in addition to any leave provided above.
- C. The Employee may be required to submit proof of the relative's death before the final approval of leave with pay is granted.

Article 22 – Maternity Leave

- A. Any full-time employee who becomes disabled as a result of pregnancy, which disability prevents her from performing the duties of her position, shall be entitled to a leave of absence without pay. Such leave shall not exceed ninety (90) calendar days, whether or not it is combined with sick leave, vacation, compensatory time off, and/or leave without pay.
- B. The employee may request up to ninety (90) additional days of leave without pay subject to the approval of the City Council on recommendation of the Department Head and City Manager.

Article 23 – Unauthorized Leave

Unauthorized leave of absence is cause for immediate dismissal, in accordance with law.

Article 24 – Compensatory Time Off

- A. Employees eligible for overtime pay may elect to receive compensatory time off (CTO) at the rate of time and one-half (1-1/2) in lieu of overtime pay.
- B. Employees may have a maximum CTO credit of eighty (80) hours in any fiscal year period of July 1st through June 30th.
- C. Employees shall be allowed to carry over a maximum of 40 hours of Compensatory Time Off (CTO) into the following fiscal year. The remaining compensatory time off accruals shall be paid out at the employee's current hourly rate of pay at the end of the fiscal year.

Article 25 – Military Leave

Full-time employees shall receive military leave benefits in accordance with State law.

Article 26 – Medical Examination

- A. Any applicant being considered for appointment as a full-time probationary employee shall, prior to such appointment, undergo a physical examination performed by a licensed physician at City's expense.
- B. Annually thereafter, each employee may undergo a physical examination at CITY's expense, to be performed by a licensed physician of employee's choice.

Article 27 - Retirement

A. Employees Hired Before May 1, 2012

For employees hired before May 1, 2012 only, the CITY shall provide employees with retirement coverage through the Public Employees' Retirement System (PERS) including the following:

- 1. Government Code Section 20965, Sick Leave Service Credit, and
- 2. Government Code Section 21354.4 2.5% @ 55 Full and Modified Formula

B. Employees Hired on or After May 1, 2012 and Before January 1, 2013, or Employees Who Qualify for Pension Reciprocity

For employees hired on or after May 1, 2012 and before January 1, 2013, as well as for employees who qualify for pension reciprocity pursuant to Government Code Section 7522.02 (c) and any related reciprocity requirements established by PERS, the City shall provide retirement coverage through the PERS retirement formula under Government Code Section 21353 (2% @ 60). The formula shall be based upon a 3 year average salary. The City also shall provide credit for unused sick leave pursuant to Government Code Section 20965.

C. Employees Hired on or After January 1, 2013

For employees hired on or after January 1, 2013 who do not qualify for pension reciprocity pursuant to Government Code Section 7522.02 (c), the City shall provide retirement coverage through the PERS retirement formula under Government Code Section 7522.20 (2% @ 62). This formula shall be based upon a 3 year average salary. The City also shall provide credit for unused sick leave pursuant to Government Code Section 20965.

D. Employee Contributions

All employees shall pay the full employees' share of Public Employees' Retirement employee contribution as determined by PERS; the City shall not pick up any portion of the required employee contribution.

Article 28 – Medical Benefits

Regular or probationary full time employees are members of the Public Employees Medical and Hospital Care Act ("PERS Health") insurance program. The CITY's monthly contribution to provide health insurance benefits for the individual employee and the employee's eligible

dependents shall be the minimum payment required by the Public Employees Medical and Hospital Care Act.

Flexible Benefits Plan - Regular or probationary full-time employees may participate in the flexible benefits plan. The City shall offer an Internal Revenue Code Section 125 Plan, which contains the components of premium conversion, health care reimbursement account, and dependent care reimbursement account

A. Effective January 1, 2012, the CITY shall contribute the below-listed amount per month toward each employee's Section 125 Plan components:

1. 100% of the Dental Plan monthly premium amount, less the 10% employee contribution, paid through a payroll deduction.
2. 100% of the Medical Plan monthly premium amount for any eligible CalPERS plan, less the minimum premium payment required by PERS and less the 10% employee contribution, paid through a payroll deduction.

B. An employee may use any and all CITY contributions to Section 125 Plan toward the cost of employer-provided PERS Medical health insurance and Dental insurance for the employee and eligible dependents. An employee may not use funds for other reasons.

C. Share the Savings Program

The CITY shall provide three hundred dollars (\$300.00) per month to any employee who meets the following criteria:

1. Declines the CITY sponsored Medical Coverage and
2. Provide the CITY with acceptable evidence of Medical Insurance from an alternate provider.

D. The CITY shall advise the Association prior to any change of the insurance carrier or method of funding coverage for any fringe benefits granted pursuant to this provision.

E. Affordable Care Act

At such time as regulations are issued implementing the Affordable Care Act ("ACA"). The City and the CPEA will meet to discuss the impact, if any, of such regulations on any benefit plan offered by the City. If modifications to the benefits, eligibility for coverage, employer or employee contributions to the cost of insurance or any other provisions of the benefits plans covered by this MOU will be modified by the ACA during the term of this agreement, it is agreed that the City and the CPEA will reopen the contract to meet and confer and determine how such mandated changes will be implemented.

Article 29 – Dental and Other Benefits

- A. The CITY shall provide continued dental coverage for employees and qualified dependents, the entire premium to be paid in accordance with Article 28 during the term of this MOU.
- B. The CITY shall make available a vision care plan for its employees and dependents. The CITY shall not contribute to the premium for this coverage. This plan is provided as an employee option. The CITY has the option of changing plans or providers, however, prior to making any such change, the CITY shall notify the ASSOCIATION and discuss the reasons for the change.
- C. The CITY shall make available an orthodontist plan for its employees and dependents. The CITY shall not contribute to the premium for this coverage. This plan is provided as an employee option.
- D. The CITY shall advise the Association prior to any change of the insurance carrier or method of funding coverage for any fringe benefits granted pursuant to this provision.

Article 30 – Life Insurance

CITY shall provide life insurance coverage for each employee covered by this MOU at a minimum amount of Fifty Thousand Dollars (\$50,000), or one year's base salary whichever is greater to include a double indemnity provision.

Article 31 – Uniforms and Equipment

- A. All full-time maintenance and plant personnel shall be issued, at CITY's expense, the following items:

- 4 shirts and nametags (**)
- 4 trousers (***)
- 1 safety helmet (hat)
- 2 pair safety boots or shoes
- 1 seasonal jacket with removable liner
- 1 set rain gear (tops and bottoms)
- 1 pair rain boots and/or hip boots
- 1 coverall
- 1 pair work gloves

**In place of 4 button-down shirts, 8 T-shirts (not to exceed \$175) may be purchased.

***To allow flexibility, instead of 4 trousers and one pair of coveralls, the employee may choose to have 5 trousers and no coveralls. Treatment plant operators may have two additional trousers.

- B. Uniform Cleaning and Replacement

1. Employees shall bear cost of cleaning and maintaining items issued, except as otherwise required by law. CITY shall bear cost of issued items for replacement, subject to authorization by the Department Head.
2. Cost of replacement or repair of issued items as a result of employee neglect shall be borne by the employee.
3. Every employee subject to this MOU shall return to the Department Head, on termination of employment, all items issued.
4. The Department Head may issue items to any or all employees covered by this MOU, when it is found that the employee's safety or health is being compromised.
5. The Department Head may add or subtract items and quantity issued, when it is found that the job classification warrants.
6. The Department Head shall select uniform design, color and uniform patches, nametags, or other means of identification.

Article 32 – Tuition Reimbursement

Tuition reimbursement shall be provided for as specified in the CITY Personnel Rules and Regulations.

Article 33 – Grievance Procedures

- A. Grievances: An allegation by any regular employee that the employee has been adversely affected by a violation of a specific provision of the MOU, Department Policies and Procedures, Personnel Rules and Regulations and/or established procedures.
 - B. Grievant: Is the Association or any regular employee adversely affected by a violation of a specific provision of the MOU, Department Policies and Procedures, Personnel Rules and Regulations and/or established procedures.
 - C. Workday: A workday is any day the CITY offices are regularly open for business.
 - D. Personnel Director: The Personnel Director shall be the City Manager or his/her designee.
1. General Provisions
 - a. Time limits may be waived by mutual written agreement of the parties.
 - b. If the City does not meet the time limits, the grievance may be advanced to the next step at the option of the party waiting for the response.
 - c. A grievant may be represented by a representative of his/her own choice at any step in the presentation of his/her grievance.

- d. No reprisal shall be taken against any employee for the legitimate use of this procedure.
- e. Any grievance not timely filed or appealed within specified time limits, shall be null and void.

2. Procedure

The following procedure shall be followed in presenting a grievance:

- a. The timelines set forth hereinabove are mandatory. Failure to comply with such timelines, as set forth herein shall terminate the rights granted hereunder.
- b. Within fifteen (15) workdays of the occurrence or within 15 days of when the employee should have reasonably known of the event-giving raise to the grievance, the employee shall discuss the grievance with the immediate supervisor.
- c. If, after discussing the grievance with the supervisor, the employee is still dissatisfied, the employee may file a written grievance with the Department Head, provided such written grievance is filed within ten (10) workdays of the meeting referred to in Article 33.D. 2.b.
- d. The written grievance shall set forth a clear statement of the grievance, the circumstances involved, the decision rendered at the informal conference, and the specific remedy sought.
- e. A written decision within ten (10) workdays shall be communicated to the employee. If the response is not made within the time limits, or if the employee is still dissatisfied, the employee may appeal in writing to the City Manager or designee.
- f. If the employee is still dissatisfied, the employee may request the City Manager to set up a mediation session.
- g. A State Mediator shall mediate the dispute according to the normal rules governing mediation and shall provide the City Manager and grievant with a written recommendation.
- h. An Employee appealing to the City Manager or designee shall file a written appeal within ten (10) workdays of notice of the decision referred to in Article 33.2 e. within ten (10) workdays of the lapse of the time limits within which the written decision was required. The City Manager may also set the matter for a grievance hearing. The City Manager or designee shall communicate his decision in writing within ten (10) workdays of receiving or the holding of a grievance hearing, whichever is longer.
- i. City Manager's action shall be final and binding as there shall be no further review.

Article 34– Layoff and Abolition of Position

Please see Section 11 Layoff and Re-Employment of the CITY Personnel Rules and Regulations

Article 35 – Personnel Rules and Regulations

The Articles of this MOU are also covered in the CITY Personnel Rules and Regulations. It is the intent of the parties that the provisions in both the CITY Personnel Rules and Regulations and the MOU be the same. If there is conflict between the two, the provisions of this MOU shall prevail over the CITY Personnel Rules and Regulations.

Any specific reference to a section of the CITY Personnel Rules and Regulations in this MOU is subject to review under Article 33 Grievance Procedures and may not be modified without mutual agreement of the ASSOCIATION except during MOU negotiations.

Article 36 – Labor/Management Committee

The Labor/Management Committee will consist of two (2) representatives selected by the CITY and two (2) representatives selected by the ASSOCIATION. The Labor/Management Committee shall meet, as necessary, to discuss issues regarding the Labor/Management relationship and working conditions.

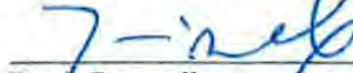
Article 37 - Signatures

In witness whereof, the parties have caused their authorized representatives to execute this MOU as a mutual recommendation to the City Council of the City of Calistoga this

CITY OF CALISTOGA


Michael Kim
Acting City Manager

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION


Travis Bounsall
President


Richard Reed
Labor Negotiator

Article 34– Layoff and Abolition of Position

Please see Section 11 Layoff and Re-Employment of the CITY Personnel Rules and Regulations

Article 35 – Personnel Rules and Regulations

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In witness whereof, the parties have caused their authorized representatives to execute this MOU as a mutual recommendation to the City Council of the City of Calistoga this

CITY OF CALISTOGA



Michael Kim
Acting City Manager

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION



Travis Bounsall
President

Richard Reed
Labor Negotiator

EXHIBIT A

Position Classifications and Salary Schedule Ranges Receiving 4% Salary Adjustment

Position Title	Range
Assistant Planner	31
Associate Planner	35
Chief Plant Operator (Water & Wastewater)	34
Plant Operator I	20
Plant Operator II	25
Recreation Coordinator	12

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)**EXHIBIT A****4% Salary Increase January 1, 2019 (excludes Y-Rated Positions)**

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,454	3,626	3,808	3,998	4,198
2	3,488	3,663	3,846	4,038	4,240
3	3,523	3,699	3,884	4,078	4,282
4	3,558	3,736	3,923	4,119	4,325
5	3,594	3,774	3,962	4,160	4,368
6	3,630	3,811	4,002	4,202	4,412
7	3,666	3,849	4,042	4,244	4,456
8	3,703	3,888	4,082	4,286	4,501
9	3,740	3,927	4,123	4,329	4,546
10	3,833	4,025	4,226	4,438	4,659
11	3,927	4,123	4,329	4,546	4,773
12	4,025	4,226	4,438	4,659	4,892
13	4,123	4,329	4,546	4,773	5,012
14	4,226	4,438	4,659	4,892	5,137
15	4,329	4,546	4,773	5,012	5,262
16	4,438	4,659	4,892	5,137	5,394
17	4,546	4,773	5,012	5,262	5,525
18	4,659	4,892	5,137	5,394	5,664
19	4,773	5,012	5,262	5,525	5,802
20	4,892	5,137	5,394	5,664	5,947
21	5,012	5,262	5,525	5,802	6,092
22	5,137	5,394	5,664	5,947	6,244
23	5,262	5,525	5,802	6,092	6,396
24	5,394	5,664	5,947	6,244	6,556
25	5,525	5,802	6,092	6,396	6,716
26	5,664	5,947	6,244	6,556	6,884
27	5,802	6,092	6,396	6,716	7,052
28	5,947	6,244	6,556	6,884	7,228
29	6,092	6,396	6,716	7,052	7,405
30	6,244	6,556	6,884	7,228	7,590
31	6,396	6,716	7,052	7,405	7,775
32	6,556	6,884	7,228	7,590	7,969
33	6,716	7,052	7,405	7,775	8,164
34	6,884	7,228	7,590	7,969	8,368
35	7,052	7,405	7,775	8,164	8,572
36	7,228	7,590	7,969	8,368	8,786
37	7,405	7,775	8,164	8,572	9,000
38	7,590	7,969	8,368	8,786	9,225
39	7,775	8,164	8,572	9,000	9,450
40	7,969	8,368	8,786	9,225	9,687

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)**EXHIBIT A****3% Salary Increase January 1, 2020 (excludes Y-Rated Positions)**

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,557	3,735	3,922	4,118	4,324
2	3,593	3,772	3,961	4,159	4,367
3	3,629	3,810	4,001	4,201	4,411
4	3,665	3,848	4,041	4,243	4,455
5	3,702	3,887	4,081	4,285	4,499
6	3,739	3,926	4,122	4,328	4,544
7	3,776	3,965	4,163	4,371	4,590
8	3,814	4,005	4,205	4,415	4,636
9	3,852	4,045	4,247	4,459	4,682
10	3,948	4,146	4,353	4,571	4,799
11	4,045	4,247	4,459	4,682	4,916
12	4,146	4,353	4,571	4,799	5,039
13	4,247	4,459	4,682	4,916	5,162
14	4,353	4,571	4,799	5,039	5,291
15	4,459	4,682	4,916	5,162	5,420
16	4,571	4,799	5,039	5,291	5,556
17	4,682	4,916	5,162	5,420	5,691
18	4,799	5,039	5,291	5,556	5,833
19	4,916	5,162	5,420	5,691	5,976
20	5,039	5,291	5,556	5,833	6,125
21	5,162	5,420	5,691	5,976	6,274
22	5,291	5,556	5,833	6,125	6,431
23	5,420	5,691	5,976	6,274	6,588
24	5,556	5,833	6,125	6,431	6,753
25	5,691	5,976	6,274	6,588	6,918
26	5,833	6,125	6,431	6,753	7,091
27	5,976	6,274	6,588	6,918	7,263
28	6,125	6,431	6,753	7,091	7,445
29	6,274	6,588	6,918	7,263	7,627
30	6,431	6,753	7,091	7,445	7,817
31	6,588	6,918	7,263	7,627	8,008
32	6,753	7,091	7,445	7,817	8,208
33	6,918	7,263	7,627	8,008	8,408
34	7,091	7,445	7,817	8,208	8,619
35	7,263	7,627	8,008	8,408	8,829
36	7,445	7,817	8,208	8,619	9,050
37	7,627	8,008	8,408	8,829	9,270
38	7,817	8,208	8,619	9,050	9,502
39	8,008	8,408	8,829	9,270	9,734
40	8,208	8,619	9,050	9,502	9,977

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)**EXHIBIT A****3% Salary Increase January 1, 2021 (excludes Y-Rated Positions)**

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,664	3,847	4,040	4,241	4,454
2	3,701	3,886	4,080	4,284	4,498
3	3,738	3,924	4,121	4,327	4,543
4	3,775	3,964	4,162	4,370	4,589
5	3,813	4,003	4,204	4,414	4,634
6	3,851	4,043	4,246	4,458	4,681
7	3,889	4,084	4,288	4,502	4,728
8	3,928	4,125	4,331	4,547	4,775
9	3,968	4,166	4,374	4,593	4,823
10	4,067	4,270	4,484	4,708	4,943
11	4,166	4,374	4,593	4,823	5,064
12	4,270	4,484	4,708	4,943	5,190
13	4,374	4,593	4,823	5,064	5,317
14	4,484	4,708	4,943	5,190	5,450
15	4,593	4,823	5,064	5,317	5,583
16	4,708	4,943	5,190	5,450	5,722
17	4,823	5,064	5,317	5,583	5,862
18	4,943	5,190	5,450	5,722	6,008
19	5,064	5,317	5,583	5,862	6,155
20	5,190	5,450	5,722	6,008	6,309
21	5,317	5,583	5,862	6,155	6,463
22	5,450	5,722	6,008	6,309	6,624
23	5,583	5,862	6,155	6,463	6,786
24	5,722	6,008	6,309	6,624	6,956
25	5,862	6,155	6,463	6,786	7,125
26	6,008	6,309	6,624	6,956	7,303
27	6,155	6,463	6,786	7,125	7,481
28	6,309	6,624	6,956	7,303	7,668
29	6,463	6,786	7,125	7,481	7,855
30	6,624	6,956	7,303	7,668	8,052
31	6,786	7,125	7,481	7,855	8,248
32	6,956	7,303	7,668	8,052	8,454
33	7,125	7,481	7,855	8,248	8,661
34	7,303	7,668	8,052	8,454	8,877
35	7,481	7,855	8,248	8,661	9,094
36	7,668	8,052	8,454	8,877	9,321
37	7,855	8,248	8,661	9,094	9,548
38	8,052	8,454	8,877	9,321	9,787
39	8,248	8,661	9,094	9,548	10,026
40	8,454	8,877	9,321	9,787	10,276

EXHIBIT B

Position Classifications and Salary Schedule Ranges Y-Rated Classifications Receiving One-Time 4% Bonus

Position Title	Range
Accounting Assistant	15
Administrative Assistant	18
Administrative Services Technician	21
Assistant Engineer	33
Associate Civil Engineer	37
Building Inspector	28
Maintenance Technician I	15
Maintenance Technician II	19
Permit Technician	19
Senior Accounting Assistant	20
Senior Maintenance Technician	24
Senior Plant Operator	28

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)**EXHIBIT B****0% Salary Increase January 1, 2019 (Y-Rated)**

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,321	3,487	3,661	3,844	4,036
2	3,354	3,522	3,698	3,883	4,077
3	3,388	3,557	3,735	3,922	4,118
4	3,421	3,593	3,772	3,961	4,159
5	3,456	3,628	3,810	4,000	4,200
6	3,490	3,665	3,848	4,040	4,242
7	3,525	3,701	3,886	4,081	4,285
8	3,560	3,738	3,925	4,122	4,328
9	3,596	3,776	3,965	4,163	4,371
10	3,686	3,870	4,064	4,267	4,480
11	3,776	3,965	4,163	4,371	4,589
12	3,870	4,064	4,267	4,480	4,704
13	3,965	4,163	4,371	4,589	4,819
14	4,064	4,267	4,480	4,704	4,939
15	4,163	4,371	4,589	4,819	5,060
16	4,267	4,480	4,704	4,939	5,186
17	4,371	4,589	4,819	5,060	5,313
18	4,480	4,704	4,939	5,186	5,446
19	4,589	4,819	5,060	5,313	5,579
20	4,704	4,939	5,186	5,446	5,718
21	4,819	5,060	5,313	5,579	5,857
22	4,939	5,186	5,446	5,718	6,004
23	5,060	5,313	5,579	5,857	6,150
24	5,186	5,446	5,718	6,004	6,304
25	5,313	5,579	5,857	6,150	6,458
26	5,446	5,718	6,004	6,304	6,619
27	5,579	5,857	6,150	6,458	6,781
28	5,718	6,004	6,304	6,619	6,950
29	5,857	6,150	6,458	6,781	7,120
30	6,004	6,304	6,619	6,950	7,298
31	6,150	6,458	6,781	7,120	7,476
32	6,304	6,619	6,950	7,298	7,663
33	6,458	6,781	7,120	7,476	7,850
34	6,619	6,950	7,298	7,663	8,046
35	6,781	7,120	7,476	7,850	8,242
36	6,950	7,298	7,663	8,046	8,448
37	7,120	7,476	7,850	8,242	8,654
38	7,298	7,663	8,046	8,448	8,870
39	7,476	7,850	8,242	8,654	9,087
40	7,663	8,046	8,448	8,870	9,314

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)
EXHIBIT B
3% Salary Increase January 1, 2020 (Y-Rated)

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,420	3,591	3,771	3,960	4,158
2	3,455	3,627	3,809	3,999	4,199
3	3,489	3,664	3,847	4,039	4,241
4	3,524	3,700	3,885	4,080	4,284
5	3,559	3,737	3,924	4,120	4,326
6	3,595	3,775	3,963	4,162	4,370
7	3,631	3,812	4,003	4,203	4,413
8	3,667	3,851	4,043	4,245	4,457
9	3,704	3,889	4,083	4,288	4,502
10	3,796	3,986	4,186	4,395	4,615
11	3,889	4,083	4,288	4,502	4,727
12	3,986	4,186	4,395	4,615	4,845
13	4,083	4,288	4,502	4,727	4,963
14	4,186	4,395	4,615	4,845	5,088
15	4,288	4,502	4,727	4,963	5,212
16	4,395	4,615	4,845	5,088	5,342
17	4,502	4,727	4,963	5,212	5,472
18	4,615	4,845	5,088	5,342	5,609
19	4,727	4,963	5,212	5,472	5,746
20	4,845	5,088	5,342	5,609	5,890
21	4,963	5,212	5,472	5,746	6,033
22	5,088	5,342	5,609	5,890	6,184
23	5,212	5,472	5,746	6,033	6,335
24	5,342	5,609	5,890	6,184	6,493
25	5,472	5,746	6,033	6,335	6,652
26	5,609	5,890	6,184	6,493	6,818
27	5,746	6,033	6,335	6,652	6,984
28	5,890	6,184	6,493	6,818	7,159
29	6,033	6,335	6,652	6,984	7,333
30	6,184	6,493	6,818	7,159	7,517
31	6,335	6,652	6,984	7,333	7,700
32	6,493	6,818	7,159	7,517	7,893
33	6,652	6,984	7,333	7,700	8,085
34	6,818	7,159	7,517	7,893	8,287
35	6,984	7,333	7,700	8,085	8,489
36	7,159	7,517	7,893	8,287	8,701
37	7,333	7,700	8,085	8,489	8,914
38	7,517	7,893	8,287	8,701	9,137
39	7,700	8,085	8,489	8,914	9,359
40	7,893	8,287	8,701	9,137	9,593

CALISTOGA PUBLIC EMPLOYEES' ASSOCIATION (CPEA)**EXHIBIT B****3% Salary Increase January 1, 2021 (Y-Rated)**

Range	Step 1	Step 2	Step 3	Step 4	Step 5
1	3,523	3,699	3,884	4,078	4,282
2	3,558	3,736	3,923	4,119	4,325
3	3,594	3,774	3,962	4,160	4,368
4	3,630	3,811	4,002	4,202	4,412
5	3,666	3,849	4,042	4,244	4,456
6	3,703	3,888	4,082	4,286	4,501
7	3,740	3,927	4,123	4,329	4,546
8	3,777	3,966	4,164	4,373	4,591
9	3,815	4,006	4,206	4,416	4,637
10	3,910	4,106	4,311	4,527	4,753
11	4,006	4,206	4,416	4,637	4,869
12	4,106	4,311	4,527	4,753	4,991
13	4,206	4,416	4,637	4,869	5,112
14	4,311	4,527	4,753	4,991	5,240
15	4,416	4,637	4,869	5,112	5,368
16	4,527	4,753	4,991	5,240	5,502
17	4,637	4,869	5,112	5,368	5,636
18	4,753	4,991	5,240	5,502	5,777
19	4,869	5,112	5,368	5,636	5,918
20	4,991	5,240	5,502	5,777	6,066
21	5,112	5,368	5,636	5,918	6,214
22	5,240	5,502	5,777	6,066	6,370
23	5,368	5,636	5,918	6,214	6,525
24	5,502	5,777	6,066	6,370	6,688
25	5,636	5,918	6,214	6,525	6,851
26	5,777	6,066	6,370	6,688	7,022
27	5,918	6,214	6,525	6,851	7,194
28	6,066	6,370	6,688	7,022	7,373
29	6,214	6,525	6,851	7,194	7,553
30	6,370	6,688	7,022	7,373	7,742
31	6,525	6,851	7,194	7,553	7,931
32	6,688	7,022	7,373	7,742	8,129
33	6,851	7,194	7,553	7,931	8,328
34	7,022	7,373	7,742	8,129	8,536
35	7,194	7,553	7,931	8,328	8,744
36	7,373	7,742	8,129	8,536	8,963
37	7,553	7,931	8,328	8,744	9,181
38	7,742	8,129	8,536	8,963	9,411
39	7,931	8,328	8,744	9,181	9,640
40	8,129	8,536	8,963	9,411	9,881

**AGREEMENT BETWEEN THE
CITY OF CALISTOGA
and Calistoga Fit for**

This contract is dated for identification this 1 day of January, 2019, and is made by and between the CITY OF CALISTOGA and CALISTOGA FIT, a corporation hereinafter referred to a PROVIDER and the City of Calistoga a municipal corporation, hereinafter referred to as CITY.

RECITALS

A. CITY desires to retain the services of PROVIDER to provide Adult and youth Fitness Classes

B. PROVIDER is a qualified professional capable of providing the certain professional services that CITY seeks.

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY does hereby engage PROVIDER, and PROVIDER agrees, to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** PROVIDER shall provide the following services:

ADULT AND YOUTH FITNESS CLASSES

2. **Schedule and Term.**

The schedule for performing said services is:

Days and times as mutually agreed upon by CITY and PROVIDER

PROVIDER shall commence work under this contract on January 1, 2019 and shall complete all work under this contract no later than December 31, 2019.

3. **Compensation.** In consideration of the performance of the services provided herein, Contractor shall be compensated pursuant to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

NA A. percent of basic fees collected. Basic fee shall equal to the amount of fee required to be paid by City residents. Contractor shall not receive any portion of the fees paid by non-City residents in excess of the City resident fees.

X B. \$75 per hour of class instruction; an additionally \$10 per class shall be paid for each class that takes place in the Calistoga Fit Studio

N/A C. Other: Officials/Referees will be compensated on a per game basis at the rate of \$___ Compensation includes a uniform/insurance/registration allowance not to exceed \$_____ per official per season and association dues as agreed upon by the Recreation Supervisor and the Contractor.

N/A D. In the event the City has not appropriated sufficient funds for payment beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year; payment for additional work is conditional upon future City appropriations.

4. **Payment Schedule.** CITY shall make periodic payments within thirty (30) days of receiving and approving a billing statement in proportion to the satisfactory completion of PROVIDER's services.

5. **Termination.** CITY may terminate this Agreement at any time, for any and no reason, by providing ten (10) days advance written notice to PROVIDER.

6. **Independent Contractor.** It is agreed that PROVIDER is an independent contractor, and all persons working for or under the direction of PROVIDER are PROVIDER's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of CITY.

7. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorney fees shall be based upon comparable fees of private attorneys practicing in Napa County.

8. **Insurance.** In consideration of the level of the services provided herein, PROVIDER shall show proof of insurance to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

a. X **Commercial General Liability**

- PROVIDER shall obtain Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each project. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by contractor. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("P" definition of insured contract in ISO form CG 00 01, or equivalent).

- b. N/A Auto Liability Insurance: PROVIDER shall obtain Auto Liability Insurance with minimum limits of \$1,000,000 combined single limit per accident. Coverage must apply to all owned, hired and non-owned vehicles. The City shall qualify as an insured on this policy.
- c. X Workers' Compensation Insurance: PROVIDER shall obtain statutory Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident, \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to CITY .
- e. N/A Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to CITY 's approval. Original Certificates of Coverage with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.
- f. Other Insurance Provisions:
- (1) CITY, its officers, officials and employees are to be covered as additional insured by Endorsement CG 20 10 11 85 or equivalent for Commercial General Liability coverage.
- (2) For any claims related to this project, PROVIDER's insurance coverage shall be primary and any insurance or self-insurance maintained by CITY, its officers, officials, employees and volunteers shall not contribute to it.
- (3) Provider shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Provider shall forthwith obtain and submit proof of substitute insurance. Should Provider fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Provider's sole cost and expense.
- (4) In the event PROVIDER employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of PROVIDER to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) The worker's compensation insurer shall issue an endorsement waiving its right to subrogate against the CITY OF CALISTOGA (CITY).

(6) The General Liability Policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately

9. Indemnification. . PROVIDER shall hold harmless, defend and indemnify CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees which actually or allegedly arise out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the PROVIDER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of CITY, its officers, officials, employees and volunteers.

10. Reliance Upon Professional Skill. It is mutually agreed by the parties that CITY is relying upon the professional skill of PROVIDER, and PROVIDER represents to CITY that its work shall conform to generally recognized professional standards in the industry. Acceptance of PROVIDER's work by CITY does not operate as a release of PROVIDER's said representation.

11. Amendment. This Agreement may be amended by written instrument signed by both parties.

12. Inconsistent Terms. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

13. Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

14. Background Checks. Provider will perform background checks which include fingerprinting on all personnel who are referred to the City.

14. Notices. Any notice required to be given to PROVIDER shall be deemed to be duly and properly given if mailed to PROVIDER, postage prepaid, addressed to:

or personally delivered to PROVIDER at such address or at such other addresses as PROVIDER may designate in writing to CITY .

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Dylan Feik
City Manager
CITY of CALISTOGA
1232 Washington St.
Calistoga, California 94515
707-942-2806

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to PROVIDER.

IN WITNESS WHEREOF, this Agreement is executed by CITY and by PROVIDER.

APPROVED AS TO FORM AND CONTENT:

M. T. Kuo

ACTING City Manager, CITY of CALISTOGA

PROVIDER:

By: *Jalen*

Title: *Owner - Calistoga Fit*

Taxpayer I.D. Number *46-2577 985*



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/19/2018

PRODUCER Hoffman Insurance Services, Inc. 368 Washington St Wellesley, MA 02481-6206 781.235.0087	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Donavan's Wellness Solutions 5209 San Luis Ave Santa Rosa, CA 95409-	<table border="1"><tr><th>INSURERS AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A: Philadelphia Indemnity Insurance Company</td><td>18058</td></tr><tr><td>INSURER B:</td><td></td></tr><tr><td>INSURER C:</td><td></td></tr><tr><td>INSURER D:</td><td></td></tr><tr><td>INSURER E:</td><td></td></tr></table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Philadelphia Indemnity Insurance Company	18058	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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COVERAGES

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INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS												
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PROFESSIONAL LIABILITY GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	PHPK1281659-004	01/01/2019	01/01/2020	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$2,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$300,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$2,500</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$2,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$3,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$3,000,000</td></tr></table>	EACH OCCURRENCE	\$2,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000	MED EXP (Any one person)	\$2,500	PERSONAL & ADV INJURY	\$2,000,000	GENERAL AGGREGATE	\$3,000,000	PRODUCTS - COMP/OP AGG	\$3,000,000
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A	X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PHPK1281659-004	01/01/2019	01/01/2020	<table border="1"><tr><td>COMBINED SINGLE LIMIT (EA accident)</td><td>\$1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td></td></tr><tr><td>BODILY INJURY (Per accident)</td><td></td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td></td></tr></table>	COMBINED SINGLE LIMIT (EA accident)	\$1,000,000	BODILY INJURY (Per person)		BODILY INJURY (Per accident)		PROPERTY DAMAGE (Per accident)					
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AGGREGATE																		
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				<table border="1"><tr><td>WC STATUTORY LIMITS</td><td>OTH-ER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td></td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td></td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td></td></tr></table>	WC STATUTORY LIMITS	OTH-ER	E.L. EACH ACCIDENT		E.L. DISEASE - EA EMPLOYEE		E.L. DISEASE - POLICY LIMIT					
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		OTHER																

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

It is understood and agreed that the following entity is added as an additional insured but only with respect(s) to the operations of the named insured except that liability resulting from the additional insured's sole negligence.

CERTIFICATE HOLDER

City of Calistoga
1232 Washington St
Calistoga, CA 94515-

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

POLICY CHANGE DOCUMENT

POLICY NO:
PHPK1281659-004

CHANGE # 1

CHANGE EFFECTIVE: 03/15/2019

Philadelphia Indemnity Insurance Company

PRODUCER: Hoffman Insurance Services, Inc.

NAMED INSURED: Donovan's Wellness Solutions

MAILING ADDRESS 5209 San Luis Ave
Santa Rosa, CA 95409-

POLICY PERIOD: FROM 01/01/2019 TO 01/01/2020 at
12:01 A.M. Standard Time at your mailing address shown above.

DESCRIPTION:

In consideration of the premium reflected, the policy is amended as indicated below:

Added 1 Additional Insured.

Total Annual
Additional/Return Premium

\$0.00

Total Prorate
Additional/Return Premium

\$0.00

Total Annual
Additional/Return
Tax/Surcharge/Fee

\$0.00

Total Prorate
Additional/Return
Tax/Surcharge/Fee

\$0.00



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/15/2019**PRODUCER**
Hoffman Insurance Services, Inc.
368 Washington St.
Wellesley, MA 02481-6206
781.235.0087**THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.****INSURED**
Donavan's Wellness Solutions
5209 San Luis Ave
Santa Rosa, CA 95409-**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Philadelphia Indemnity Insurance Company

18058

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

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A	X	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PHPK1281659-004	01/01/2019	01/01/2020	COMBINED SINGLE LIMIT (EA accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$1,000,000
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		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION				EACH OCCURENCE AGGREGATE	
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> V/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	OTH-ER
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

It is understood and agreed that the following entity is added as an additional insured but only with respect(s) to the operations of the named insured except that liability resulting from the additional insured's sole negligence

CERTIFICATE HOLDERCity of Calistoga/Calsitoga Rec
1232 Washington St
Calistoga, CA 94515-**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CONSULTANT SERVICES AGREEMENT

**Design Services Related to Preparation of Plans and Specifications for
Construction of Traffic Signal and Pedestrian Safety Improvements at
Petrified Forest Road and Foothill Boulevard**

THIS AGREEMENT is entered into as of the 2nd day of April 2019, by and between the CITY OF CALISTOGA, herein called the "City," and Coastland Engineer, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with the preparation of plans and specifications for construction of a traffic signal and pedestrian safety improvements at Petrified Forest Road and Foothill Boulevard; and

WHEREAS, Consultant and hereby warrants to the City that Consultant, and Consultant's sub-consultant, are skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager, or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Heidi Utterback, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than April 3, 2019 and be completed not later than August 31, 2019. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Ninety-Six Thousand and Ninety-Six Dollars (\$96,096), unless amended. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. City and Consultant acknowledge that Consultant is hereby authorized to retain W-Trans and Cinquini and Passarino for professional services related to the performance of this agreement. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant

further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be

an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors/Sub-Consultants; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor or sub-consultant of Consultant shall be recognized by the City as such; rather, all subcontractors/sub-consultants are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work, Schedule of Performance, Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.


34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: 
Michael Kim, Acting City Manager

Date: 4/16/19

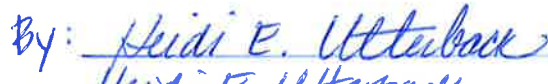
ATTEST:

By: 
Irene Camacho-Werby, City Clerk

COASTLAND ENGINEERS

By: 
John Wanger, P.E., Principal

Date: 4-11-19

By: 
Heidi E. Utterback
Corp. Secretary

Date: 4/11/19

EXHIBIT A

Scope of Work, Schedule of Performance, Compensation



COASTLAND

CIVIL ENGINEERING - CONSTRUCTION MANAGEMENT - BUILDING DEPARTMENT SERVICES

March 21, 2019

Mike Kirn
City of Calistoga
1232 Washington Street
Calistoga, CA 94515

Subject: Proposal for Professional Engineering Services Relating to the Traffic Signal and Pedestrian Safety Improvements at Petrified Forest Road and Foothill Boulevard

Dear Mike:

Thank you for providing Coastland the opportunity to submit this proposal for Engineering design services for the Petrified Forest Rd/Foothill Blvd. Traffic Signal and Pedestrian Safety Improvements Project. We have reviewed the documentation provided by the City and feel that we have a complete understanding of the City's goals for the project.

PROJECT UNDERSTANDING

The City of Calistoga is in need of engineering design (PS&E) for replacing the four-way stop at the Petrified Forest Rd and Foothill Blvd. intersection with a traffic signal and pedestrian safety improvements. The project is within Caltrans right of way and will require review and approval thru the Caltrans Encroachment Permit process. It is assumed that the intersection improvements would include signalization and additional lanes as identified in the *Calistoga Development Impact Fee Study*, Economic & Planning Systems, Inc., September 26, 2014, unless directed otherwise by City staff. The improvements will include the traffic signal facilities as well as the necessary widening and associated curb, gutter and sidewalk for the ultimate signalized intersection configuration. It is anticipated that the widening would include the curb returns and a short section of the curb on either side of the curb returns as well as a pavement taper to transition to the existing pavement width on the SE and SW corners. The curblines along the NE and NW corners of the intersection are assumed to stay in place. Sidewalk and pedestrian ramps along the north side of the intersection from Cedar St to Mitzi Drive will be replaced to meet current ADA standards as required. The project will also include pedestrian ramps at the SE and SW corners of Petrified Forest and Foothill and striping and marking improvements. Full frontage curb, gutter, sidewalk and pavement widening beyond the proposed intersection improvements would be designed and constructed by future developments of the adjacent properties.

The City planning department will be preparing the environmental clearances for the project which is anticipated to be categorically exempt from CEQA.

Based on the above understanding of the project, we have put together the following scope of work and estimated fee for your consideration:

Santa Rosa
1400 Neotomas Avenue
Santa Rosa, CA 95405
Tel: 707.571.8005

Auburn
11641 Blocker Dr., Suite 170
Auburn, CA 95603
Tel: 530.888.9929

Pleasant Hill
3478 Buskirk Avenue, Ste. 1000
Pleasant Hill, CA 94523
Tel: 925.233.5333
www.coastlandcivil.com

SCOPE OF SERVICES

Task 1 – Meetings with City Staff

We will conduct a project kick-off meeting with the City Public Works staff to discuss project details, goals and to coordinate efforts. Also included is up to four (4) progress review meeting and one (1) field meeting with Caltrans and City staff.

Task 2 – Background Information

Coastland will assemble all of the available City information pertaining to the project including base maps, as-built drawings, and any additional pertinent information for the project. Coastland staff will conduct a field review, take digital photos and observe existing conditions so we will be able to identify any unusual or special condition that may affect the project design or construction.

Coastland will coordinate with outside utility companies to ensure that all existing facilities, both underground and overhead, are identified accurately during the design phase. This task will include writing letters to PG&E, Cable TV, and AT&T informing them of the project and requesting their facility drawings. Under this task we will follow up with each utility provider by preparing submittal packages to each so they can verify the accuracy of their facilities.

Task 3 – Topographic Survey

There is available survey mapping information dated October 2017 that was done for the property at 2449 Foothill Blvd. by Cinquini and Passarino that covers a good portion of the intersection project area. To supplement this survey, our subconsultant, Cinquini and Passarino, will conduct a topographic survey of the remaining intersection area where we need survey information. The topographic survey will be at a drawing scale of 1 inch = 20 feet, unless otherwise requested, with a one-foot contour interval. The topographic survey will include the following:

- Topographic survey coverage area will include the north half of Foothill Blvd from the NE corner of Mitzi Drive to approximately 125 feet east of the NE curb return of Cedar Street as well as 75 feet up Cedar Street and the south half of Foothill Blvd along the ARCO gas station property.
- Topographic survey will include all necessary work to produce a topographic map, including features such as, but not limited to: curb lines, water meters, sewer cleanouts, valves, manholes (including rim, invert and pipe information), utility markings on the pavement, driveway locations, sidewalks, trees four (4) inches or larger, retaining wall or decorative walls, and any other pertinent information that could apply to the project during design.
- Topographic survey will be provided on North American Vertical Datum of 1988. Topographic map to horizontally relate to the Record of Survey filed in Book 33 of Surveys at Page 3, Napa County Records.
- *A boundary survey is not a part of this scope of work.*



Task 4 – Traffic Engineering

Our subconsultant, W-Trans, will prepare construction documents for the traffic signal and striping/signing improvements. WTrans traffic engineering efforts will include the following:

- A field review of the area will be performed, including obtaining any measurements needed. The height of overhead wires will be measured if appropriate to identify conflicts that may affect pole placement. Photographs will be taken to support efficient design activities.
- Any utility conflicts will be identified for coordination (by others) with the affected utility.
- Dimensions, including turn pocket lengths, will be provided to Coastland for their use in developing the striping layout. This information will be based on our most recent analysis of the intersection and the anticipated geometrics needed to achieve acceptable operation.
- Conceptual (30%) plans for the new traffic signal will be prepared including poles, cabinets, vehicle and pedestrian heads, vehicle and bicycle detection, pre-emption equipment, and street lights. The level of detail will be adequate for decision-making and cost estimating, but details that are unnecessary will not be included so that such work would not be wasted if the design subsequently changes.
- The service point location will be coordinated with PG&E. It is assumed that any fees would be paid by the City, though the application will be prepared and submitted on the City's behalf.
- Comments from City staff will be addressed, and the pole and equipment schedule added to develop 65% plans. Draft special provisions and a cost estimate will be prepared.
- All remaining details, including a conductor schedule, will be added to the 90% plans and any comments on the 65% plans addressed. The special provisions and cost estimate will be updated, and a 90% PS&E package submitted electronically. It is assumed that the 90% and 100% submittals will be made to both the City and Caltrans.
- Any comments on the 90% PS&E will be addressed to create a 100% PS&E package, which will be submitted electronically. Responses to Caltrans comments will be provided in writing if not covered by changes to the plans.
- One additional submittal of the 100% plans that addresses any remaining comments from the City or Caltrans is assumed, with written responses to Caltrans comments prepared as appropriate.
- Up to five meetings with City staff will be attended, including a kick-off meeting and four meetings to go over comments after each submittal. Additionally, one field meeting with City and Caltrans staff is included (total of six meetings in Calistoga).

Task 5 – Encroachment Permitting

Coastland will coordinate with Caltrans to obtain an Encroachment Permit for the work within the Caltrans right-of-way. This coordination effort will begin during the preliminary design phase and will continue by providing up to three (3) design progress submittals and preparing and submitting the Encroachment Permit Application (signed by the City) to Caltrans. We provide the initial encroachment permit application and plans to Caltrans at the 90% submittal stage. Coordination with Caltrans to obtain the permit and incorporation of Caltrans requirements into the bid documents will be ongoing throughout every aspect of the design phase. We will maintain open communication to keep the City updated as to the status of the Caltrans coordination effort. Please note that this task assumes that the City will be responsible for permit



fees.

Task 6 – 30% Submittal

Following our background research, survey and field review, a 30% submittal will be prepared and submitted to the City for review. The 30% improvement plans will include the general layout and extent of the ramps, curb, gutter and sidewalk improvements as well as the location of traffic signal poles/equipment and striping modifications.

The 30% submittal will include two (2) sets of full-size plans and electronic file PDF format for City review.

Task 7 – 65% Submittal

Following the review of the 30% submittal, 65% documents will be prepared. The 65% submittal will include two (2) sets of full-size plans, draft technical specifications, and an engineer's estimate of probable construction costs. The plans will include grading details for the pedestrian ramps, curb, gutter, sidewalk and paving improvements, signing and striping, typical sections, traffic signal improvements and most of the needed details.

It is understood that the City will prepare the front end specifications. We will provide the City with two (2) sets of improvement plans, estimate of probable construction costs and preliminary technical specifications for the City to review and comment. The plans, specifications and estimate will also be provided in electronic file format (PDF for the plans, Microsoft Word for the specifications and Microsoft Excel for the estimate).

Task 8 – 90% Submittal

Following City review of the 65% design submittal, we will prepare the 90% submittal. All comments from the 65% submittal review will be addressed. The project design will essentially be complete for this submittal. The plans will include grading details for the pedestrian ramps, curb, gutter, sidewalk and paving improvements, signing and striping, typical sections, traffic signal improvements and most of the needed details.

Coastland's Construction Management Department will perform a constructability review of the contract documents. Through this review, we will help minimize claims and potential change orders.

We will provide the City with two (2) sets of improvement plans, estimate of probable construction costs and preliminary technical specifications for the City to review and comment. The plans, specifications and estimate will also be provided in electronic file format (PDF for the plans, Microsoft Word for the specifications and Microsoft Excel for the estimate).

We will also provide the required six (6) full-size sets of the plans to Caltrans for the Encroachment Permit Application submittal.



Task 9 – 100% Submittal

Following the review of the 90% submittal, Coastland will prepare the 100% construction drawings, specifications and estimate signed by a California registered Civil Engineer.

The plans will include details for all improvements and address any 90% review comments. The technical specifications will be complete. It is assumed the City will prepare specification sections for Federal criteria, DBE information, prevailing wage information, and other documents as required by Caltrans.

We will also provide the required six (6) full-size sets of the plans to Caltrans for the Encroachment Permit Application resubmittal.

Prior to producing the final reproducible bid documents, we will provide a final hard copy submittal to the City for a final review to verify comments have been addressed. We will provide the City with two (2) hard copies of final documents along with electronic files of the technical specs (Word), engineer's estimate (Excel), and plans (PDF).

If Caltrans Encroachment Permits has additional comments after the 100% submittal, we will update and resubmit the final plans (6 full-size sets) to their review and approval.

Task 10 – Bid Support

Bid noticing, document reproduction, bid administration and distribution will be provided by the City. During the bidding process, we will provide bid assistance to the City to answer any questions that may arise. This will include assisting the City with clarifications or preparing an addendum that may be necessary.

Task 11 – Construction Design Support Services

Coastland and WTrans will assist the City with the following construction support services:

- Respond to RFIs (assumes up to two (2) contractor's RFI's)
- Prepare details for contract change order requests (assumes one (1) CCO request)
- Responding to traffic signal RFI's and review of traffic signal materials submittals. Inspection and field visits are specifically excluded from this task.
- Signal timing will be provided for implementation during initiation of the new signal. It is assumed the timing would be input and fine-tuned by others.

It is our understanding that the City does not need us to attend the preconstruction meeting.

Please note the budget we have calculated for the Construction Support task is based on the assumptions outlined above. If there are more RFI's or change order requests, we will prepare a revised scope and fee for the additional review and response efforts.



Tasks Performed by City:

It is understood that the following work will be performed by the City:

- Prepare front end section of the bid documents including any federal requirements required by Caltrans, the Notice to Bidders and bid advertisement.
- Prepare all staff reports and resolutions for the City Council.
- Submit legal advertisement of the project for bidding.
- Bid document reproduction and distribution to contractors.
- Environmental Clearances

Optional Tasks

If the City desires, Coastland would be pleased to provide a proposal for the following services:

- Construction management and/or inspection services
- Review of Contractor Submittals
- Record Drawings

SCHEDULE

Coastland is ready to begin the design efforts upon authorization from the City to proceed. We are committed to allocating appropriate level of staff to meet the completion goals of the project and we will work closely with the City to meet the desired goals.

COST PROPOSAL

Based on our scope of work, we are proposing that the design services associated with this project be completed for a not-to-exceed amount of \$96,069. The amount quoted is assuming that all of the work for this project will fall under the scope of work as previously described. The fee includes all direct expenses (subconsultants, reproducibles, mileage, etc.). If additional work is necessary that falls outside of this scope of work, we can either re-negotiate a new scope of work or provide these services on a time and materials basis per our adopted schedule of hourly rates.

We appreciate the opportunity to propose on this work for the City of Calistoga. After you review this information, please let me know if you have any questions.

Sincerely,
COASTLAND

Heidi E. Utterback

Heidi Utterback, PE
Principal / Engineering Design Manager

cc: John Wanger



WORK ESTIMATE

Petrified Forest Rd at Foothill Blvd - Traffic Signal			Proposal for Professional Engineering Services						City of Calistoga		
Task Information			Billing Classification & Rate						Hour & Cost Information		
Task No.	Task Description	Project Manager	Senior Engineer	Assistant Engineer	CAD Designer	Clerical	Const. Mgr.	Total Hours	Total Cost	Subconsultant/Comments	
		\$185	\$155	\$135	\$150	\$80	\$160				
1 Meeting with City Staff											
	Kick-off Meeting (1)	4		4				8	\$1,280		
	Design Progress Meetings (4)	10		10				20	\$3,200		
	Field Meeting with Caltrans/City (1)	4		4				8	\$1,280		
	Subtotal							36	\$5,760		
2 Background Information											
	Background Information Gathering	2		3	2			7	\$1,075		
	Field Review and Photo Log	4		5				9	\$1,415		
	Utility Coordination	2		4	6			12	\$1,810		
	Subtotal							28	\$4,300		
3 Topographic Survey											
	Topographic Survey								\$4,474	C&P	
	Coordination with Surveyor	2			4			6	\$970		
	Subtotal							6	\$5,444		
4 Traffic Engineering											
	Traffic Engineering								\$27,025	WTrans	
	Coordination with Subconsultant	8		4	4			16	\$2,620		
	Subtotal							16	\$29,645		
5 Encroachment Permitting											
	Caltrans Encroachment Permit	8		8	4	2		22	\$3,320		
	Subtotal							22	\$3,320		
6 30% Submittal											
	30% Plans	4		4	40			48	\$7,280		
	Subtotal							48	\$7,280		
7 65% Submittal											
	Plans & Details	6		4	64			74	\$11,250		
	Specifications	2		6		2		10	\$1,340		
	Cost Estimate	2		4	4			10	\$1,510		
	QC Review		2				2	4	\$630		
	Subtotal							98	\$14,730		
8 90% Submittal											
	Plans & Details	4		4	32			40	\$6,080		
	Specifications	2		8		2		12	\$1,610		
	Cost Estimate	2		4	2			8	\$1,210		
	QC Review		4				4	8	\$1,260		
	Subtotal							68	\$10,160		
9 100% Submittal											
	Plans & Details	2		2	24			28	\$4,240		
	Specifications	1		4		2		7	\$885		
	Cost Estimate	1		4	2			7	\$1,025		
	QC Review		2				2	4	\$630		
	Subtotal							46	\$6,780		
10 Bid Support											
	Addendum/Bid Questions	6		4	2	2		14	\$2,110		
	Subtotal							14	\$2,110		
11 Construction Support Services											
	Respond to RFIs/Change Orders	6		8	4		2	20	\$3,110		
	Respond to RFIs/Submittal Review-WTrans							0	\$1,150	WTrans	
	Signal Timing-WTrans							0	\$1,035	WTrans	
	Subtotal							20	\$5,295		
	Miscellaneous Costs								\$1,245	Mileage, Repro	
	Total	82	8	98	194	10	10	402	\$96,069		



COASTLAND

SCHEDULE OF HOURLY RATES

July 01, 2018 through June 30, 2019

PROFESSIONAL SERVICES

Principal Engineer	\$190-210/hour
Supervising Engineer	\$165-190/hour
Senior Engineer	\$150-170/hour
Associate Engineer	\$135-145/hour
Assistant Engineer	\$120-135/hour
Junior Engineer	\$110-125/hour
Principal Designer	\$140-150/hour
Engineering Assistant	\$110-140/hour
Senior Engineering Technician	\$130-150/hour
Engineering Technician	\$110-130/hour
Engineering Aide	\$90-105/hour
Resident Engineer	\$145-175/hour
Construction Manager	\$140-160/hour
Construction Inspector*	\$120-140/hour
Construction Administrator	\$80-90/hour
Building Plan Check Engineer/Architect	\$140-165/hour
Building Official and/or CASp	\$145-175/hour
Supervising Building Inspector	\$145-160/hour
Senior Building Inspector	\$125-140/hour
Building Inspector (I & II)	\$95-125/hour
Senior Plans Examiner	\$120-135/hour
Plans Examiner (I & II)	\$100-115/hour
Supervising Permit Technician	\$110-125/hour
Senior Permit Technician	\$95-105/hour
Permit Technician (I & II)	\$80-90/hour

CLERICAL	\$80-95/hour
VEHICLE	\$15-20/hour
MILEAGE	\$0.68/mile**
OUTSIDE SERVICES	Cost + 15%
MATERIALS	Cost + 15%

- Computer time is included in the hourly rates used above.
- When applicable, mileage or vehicle rates will be charged, but not both.
- * Includes services subject to prevailing wage rates.

EMPLOYMENT AGREEMENT
between
CITY OF CALISTOGA AND MICHAEL KIRN

1. PARTIES AND EFFECTIVE DATE.

The parties to this Agreement are the City of Calistoga ("CITY") and Michael Kirn ("MANAGER"). This Agreement is entered into on June 18, 2019 ("Effective Date").

2. PURPOSE.

The purpose of this Agreement is to provide for the employment of MANAGER as City Manager of CITY.

3. DUTIES.

- a. CITY agrees to employ MANAGER as City Manager of the City of Calistoga to perform the functions and duties specified in the ordinances and resolutions of CITY, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.
- b. MANAGER shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by CITY.
- c. MANAGER shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, MANAGER must complete disclosure forms required by law.

4. TERM.

- a. MANAGER shall commence performance of his duties hereunder on-site at the City Hall as of the Effective Date identified herein.
- b. MANAGER is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
- c. MANAGER agrees to remain in the exclusive employment of CITY during the term of this Agreement and not to be otherwise employed during the term of this Agreement. The term "employed," however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on personal time off.

5. DISABILITY.

The CITY shall have the option to terminate this Agreement without further payment of compensation and benefits under Paragraph 6, or severance payment under Paragraph 7(c) if MANAGER is deceased, permanently disabled, or incapacitated, for a period of two (2) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period.

6. COMPENSATION AND BENEFITS.

- a. Salary.
 - i. CITY agrees to pay MANAGER for his services rendered pursuant hereto as City Manager, a salary of Sixteen Thousand Five Hundred dollars (\$16,500) per month for the first six (6) months of employment as City Manager, payable in installments at the same time as other employees of the CITY are paid. MANAGER's

compensation as City Manager shall commence as of June 17, 2019.

- ii. Six months from the Effective Date of this Agreement (December 18, 2019) and contingent upon a satisfactory six (6) month performance evaluation by CITY pursuant to Paragraph 9, the MANAGER salary shall increase to Eighteen Thousand Eighty Four dollars (\$18,084) per month, payable in installments at the same time as other employees of the CITY are paid. In the event MANAGER receives an unsatisfactory six-month performance evaluation, the Council will inform MANAGER during his evaluation that this second six-month increase shall not go into effect.
 - iii. CITY may, in its sole discretion, grant to MANAGER, a merit increase of up to five percent (5%) annually. Said merit increase shall be based on a satisfactory annual performance evaluation pursuant to Paragraph 9.
 - iv. CITY agrees that should it provide a cost of living adjustment to all existing department heads, the MANAGER shall receive the same adjustment.
- b. Vacation Leave. MANAGER shall accrue twenty (20) days of vacation leave each fiscal year or at the maximum rate provided in City Personnel Rules and Regulations, whichever may be greater. MANAGER shall accrue vacation leave and vacation buy-out in the same manner as other department managers of the CITY. MANAGER may request, in his sole discretion, to receive equivalent cash compensation, in full or in part, at

any time during the fiscal year for a maximum of up to One Hundred Twenty (120) hours accrued and unused vacation leave. For vacation leave of more than one week at a time, MANAGER must provide sufficient notice of his intended vacation absence to the City Council.

- c. Sick Leave. MANAGER shall accrue twelve (12) days of sick leave each fiscal year. MANAGER shall accrue sick leave and buy-out, if any, in the same manner as other department managers of the CITY.
- d. Administrative Leave. MANAGER shall receive fifteen (15) days of administrative leave each fiscal year. MANAGER agrees that there shall be no accrual of unused administrative leave from fiscal year to fiscal year.
- e. Holidays and Other Employee Benefits. MANAGER shall receive employee benefits such as holidays, health insurance, dental insurance, life insurance, long-term disability insurance, and workers compensation insurance as is provided to all other department managers of the CITY.
- f. Retirement. MANAGER shall be eligible to participate in the PERS programs offered to non-safety employees. CITY shall not make any contribution to an IRS 401(k) tax contribution plan.
- g. Automobile Allowance. The CITY shall provide MANAGER with a monthly automobile allowance of Five Hundred dollars (\$500) to reimburse MANAGER for use of his personal automobile for CITY business. MANAGER shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall

further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

- h. Educational Incentive. MANAGER shall be entitled to the same educational incentives provided to other department managers of the CITY.
- i. Technology Allowance. MANAGER shall be entitled to Two Hundred (\$200) per month for technology allowance which is to be utilized for reimbursement of cellular phone service.
- j. Professional Memberships. The CITY shall budget under the City Manager's Department the cost of reasonable fees and memberships in professional organizations as well as the registration fees and travel and subsistence costs for professional and official meetings, conferences, and functions for, including but not limited to, the International City/County Management Association (ICMA) and League of California Cities.
- k. Internal Revenue Code Compliance. All provisions of this Section 6 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 6 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the CITY to effectuate such requirements shall not constitute a breach of this Agreement.

7. RESIGNATION AND TERMINATION.

- a. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of MANAGER to resign at any time from his position as City

Manager with CITY. MANAGER may terminate this Agreement by submitting written notice of his resignation to CITY. MANAGER shall give the CITY two (2) months' written notice of his intention to resign. If MANAGER resigns his employment with the CITY, he shall not be entitled to any severance pay nor continued compensation and benefits, except as otherwise required under state or federal law.

- b. MANAGER serves at the pleasure of the CITY and nothing herein shall be taken to prevent, limit, or otherwise interfere with the right of CITY to terminate the services of MANAGER, with or without cause, and with or without prior notice. There is no express or implied promise made to MANAGER for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between MANAGER and CITY. MANAGER expressly waives any claim or right under contrary law. It is expressly understood that termination may occur upon a majority vote of the City Council.
- c. In the event the CITY terminates MANAGER's employment without cause, MANAGER shall receive a severance payment of six (6) months' salary. MANAGER shall receive an additional three (3) months' salary, for a maximum severance payment of nine (9) months' salary, if MANAGER is terminated without cause within ninety (90) days before or after an election. There is no express or implied promise made to MANAGER for any form of continued employment as the City Manager. If MANAGER resigns following a request by a majority of the City Council that

MANAGER resign, then MANAGER shall have the right to declare such offer a termination as of the date of the offer.

- d. Notwithstanding Paragraph 7(c) above, the CITY shall not be obligated to pay any compensation, benefits, or severance under the provisions of this Agreement if MANAGER is terminated with cause, including, without limitation, because of a conviction, plea bargain, or adverse State Attorney General, Grand Jury, or Fair Political Practices Commission determination involving any felony, intentional tort, crime of moral turpitude, or violation of statute or law constituting forfeiture of office, misconduct in office, misuse of public funds, or conflict of interest. During the proceedings which may be necessary for CITY to confirm the cause for termination hereunder, the CITY may place MANAGER on unpaid administrative leave.

8. OWNERSHIP OF RECORDS; RETENTION OF RECORDS.

All reports, notes, plans, documents, records, computer data, and other material or certified copies of same, prepared by MANAGER in the course and scope of his duties under this Agreement, shall be delivered to, and become the property of the CITY. MANAGER shall make such documents available for review and/or audit by CITY and its representatives at all reasonable times during the term of this Agreement and for at least four (4) years from the date of expiration or termination of this Agreement.

9. PERFORMANCE EVALUATION.

CITY shall evaluate MANAGER's performance annually and prior to any renewal or extension of this Agreement. In order to facilitate this evaluation in the first year,

CITY and MANAGER agree to conduct a performance evaluation within six months of the Effective Date of this Agreement to allow the City Council to review MANAGER'S performance and to determine if MANAGER'S salary should be increased in the second 6 (six) months, as described in Paragraph 6(a)(ii). As part of each performance evaluation, the City Council and MANAGER will set goals and objectives for MANAGER's performance for the following year. CITY may, among other things, offer to renew or extend the term of this Agreement or grant a merit increase based upon MANAGER'S satisfactory performance evaluation, provided such renewal or extension is reduced to writing, signed by both Parties and adopted as an Amendment to this Agreement.

10. CONFLICT OF INTEREST PROHIBITION.

- a. MANAGER shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. MANAGER shall complete annual disclosure forms required by law.
- b. It is further understood and agreed that because of the duties of the City Manager within and on behalf of the CITY and its citizenry, MANAGER shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer, or shareholder, invest or participate in any business venture conducting business within the corporate limits of the CITY, except for stock ownership in any company whose capital stock is publicly held and regularly traded without prior written consent of the City Council. For and during the term of this Agreement, MANAGER further agrees, except for a personal residence used as his personal residence, to not

invest in any other real estate or property improvements within the corporate limits of the CITY, without the prior, written consent of the CITY Council.

11. INDEMNIFICATION.

CITY shall defend, save harmless, and indemnify MANAGER against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of MANAGER's duties as City Manager. CITY will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to MANAGER as described herein, for any acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following MANAGER's employment with CITY as City Manager.

12. NON-LIABILITY OF OFFICIALS AND EMPLOYEES.

No official, employee, attorney, or agent of CITY shall be personally liable for any term, condition, breach, default, or liability under this Agreement.

13. WAIVER.

The waiver by either party of any term or condition of this Agreement or any breach of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Council, by resolution, shall fix any other terms and conditions of

employment, as it may determine from time to time, relating to the performance of MANAGER, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

15. GENERAL EXPENSE.

CITY recognizes and agrees to pay the job-related expenses incurred by MANAGER in the course of his duties as approved by the City Council.

16. NOTICES.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set out below or as subsequently communicated by one party to the other in writing:

TO CITY: City Council
 City of Calistoga
 City Hall
 1232 Washington Street
 Calistoga, CA 94515

TO MANAGER: Michael Kirn
 [address on file at City Hall]

17. ATTORNEYS' FEES.

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear his or its own attorneys' fees and costs.

18. FINAL AGREEMENT.

This Agreement is the final expression of the complete agreement of the Parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the Parties.

19. ASSIGNMENT.

This Agreement is not assignable by either CITY or MANAGER.

20. SEVERABILITY.

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

21. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this Agreement.

22. INTERPRETATION.

This Agreement shall be interpreted as though prepared by both Parties.

CITY OF CALISTOGA:

By: _____

Chris Canning, Mayor

Dated: _____

4/25/19

MANAGER:

By: _____

Michael Kirn

Dated: _____

6/19/19

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

**AGREEMENT BETWEEN THE
CITY OF CALISTOGA
and CALISTOGA ART CENTER for**

This contract is dated for identification this 5 day of June, 2019, and is made by and between the CITY OF CALISTOGA and Calistoga Art Center a corporation hereinafter referred to a PROVIDER and the City of Calistoga a municipal corporation, hereinafter referred to as CITY.

RECITALS

A. CITY desires to retain the services of PROVIDER to provide Theater Camp for Calistoga Parks and Recreation.

B. PROVIDER is a qualified professional capable of providing the certain professional services that CITY seeks.

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY does hereby engage PROVIDER, and PROVIDER agrees, to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** PROVIDER shall provide the following services:

Theater Camp for Calistoga Parks and Recreation.

2. **Schedule and Term.**

June 17-21 and July 15-July 19 9AM-4PM

PROVIDER shall commence work under this contract on June 17, 2019 and shall complete all work under this contract no later than July 19, 2019.

3. **Compensation.** In consideration of the performance of the services provided herein, Contractor shall be compensated pursuant to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

 A. percent of basic fees collected. Basic fee shall equal to the amount of fee required to be paid by City residents. Contractor shall not receive any portion of the fees paid by non-City residents in excess of the City resident fees.

 X B. \$ 21 per hour for one staff person not to exceed 70 hours.

 X C. Other: Art Center will be compensated on a per week basis at the rate of \$ 150 to cover material costs associated with camp.

N/A D. In the event the City has not appropriated sufficient funds for payment beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year; payment for additional work is conditional upon future City appropriations.

4. **Payment Schedule.** CITY shall make periodic payments within thirty (30) days of receiving and approving a billing statement in proportion to the satisfactory completion of PROVIDER's services.

5. **Termination.** CITY may terminate this Agreement at any time, for any and no reason, by providing ten (10) days advance written notice to PROVIDER.

6. **Independent Contractor.** It is agreed that PROVIDER is an independent contractor, and all persons working for or under the direction of PROVIDER are PROVIDER's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of CITY.

7. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorney fees shall be based upon comparable fees of private attorneys practicing in Napa County.

8. **Insurance.** In consideration of the level of the services provided herein, PROVIDER shall show proof of insurance to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

a. x **Commercial General Liability**

- PROVIDER shall obtain Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each project. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by contractor. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("f" definition of insured contract in ISO form CG 00 01, or equivalent).

b. **Auto Liability Insurance:** Provide shall obtain Auto Liability Insurance with minimum limits of \$1,000,000 combined single limit per accident. Coverage must apply to all owned, hired and non-owned vehicles. The City shall qualify as an insured on this policy.

- c. Workers' Compensation Insurance: PROVIDER shall obtain statutory Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident, \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

d.

Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to CITY .

e.

Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to CITY 's approval. Original Certificates of Coverage with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

- f. Other Insurance Provisions:

(1) CITY, its officers, officials and employees are to be covered as additional insured by Endorsement CG 20 10 11 85 or equivalent for Commercial General Liability coverage.

(2) For any claims related to this project, PROVIDER's insurance coverage shall be primary and any insurance or self-insurance maintained by CITY, its officers, officials, employees and volunteers shall not contribute to it.

(3) Provider shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Provider shall forthwith obtain and submit proof of substitute insurance. Should Provider fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Provider's sole cost and expense.

(4) In the event PROVIDER employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of PROVIDER to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) The worker's compensation insurer shall issue an endorsement waiving its right to subrogate against the CITY OF CALISTOGA (CITY).

(6) The General Liability Policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately

9. **Indemnification.** . PROVIDER shall hold harmless, defend and indemnify CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees which actually or allegedly arise out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the PROVIDER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of CITY, its officers, officials, employees and volunteers.

10. **Reliance Upon Professional Skill.** It is mutually agreed by the parties that CITY is relying upon the professional skill of PROVIDER, and PROVIDER represents to CITY that its work shall conform to generally recognized professional standards in the industry. Acceptance of PROVIDER's work by CITY does not operate as a release of PROVIDER's said representation.

11. **Amendment.** This Agreement may be amended by written instrument signed by both parties.

12. **Inconsistent Terms.** If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

13. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

14. **Background Checks.** Provider will perform background checks which include fingerprinting on all personnel who are referred to the City.

15. **Notices.** Any notice required to be given to PROVIDER shall be deemed to be duly and properly given if mailed to PROVIDER, postage prepaid, addressed to:

Calistoga Art Center
PO BOX 197
Calistoga, CA 94515
707.942.2278
calistogaartcenter@gmail.com

or personally delivered to PROVIDER at such address or at such other addresses as PROVIDER may designate in writing to CITY .

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

ACTING Mike Kirn
City Manager
CITY of CALISTOGA
1232 Washington St.
Calistoga, California 94515
707-942-2806

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to PROVIDER.

IN WITNESS WHEREOF, this Agreement is executed by CITY and by PROVIDER.

APPROVED AS TO FORM AND CONTENT:

Michael Kirn
MICHAEL KIRN

ACTING City Manager, CITY of CALISTOGA

PROVIDER:

By: Anna Johansson Calistoga Art Center.
Anna Johansson

Title: Office Manager

Taxpayer I.D. Number

**AGREEMENT BETWEEN THE
CITY OF CALISTOGA
and WAVES AQUATICS for**

This contract is dated for identification this 24 day of May, 2019, and is made by and between the CITY OF CALISTOGA and WAVES AQUATICS a corporation hereinafter referred to a PROVIDER and the City of Calistoga a municipal corporation, hereinafter referred to as CITY.

RECITALS

A. CITY desires to retain the services of PROVIDER to provide Coached Swim Team Practices.

B. PROVIDER is a qualified professional capable of providing the certain professional services that CITY seeks.

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, CITY does hereby engage PROVIDER, and PROVIDER agrees, to perform the services set forth herein in accordance with the following terms and conditions:

1. **Description of Services.** PROVIDER shall provide the following services:

Coached swim team practices.

2. **Schedule and Term.**

The schedule for performing said services is:

Swim team tryouts: May 28 and May 30 4:30PM; June 11, 2019- September 26, 2019, Tuesdays and Thursdays 4:30-5:30PM

PROVIDER shall commence work under this contract on June 11, 2019 and shall complete all work under this contract no later than September 26, 2019.

3. **Compensation.** In consideration of the performance of the services provided herein, Contractor shall be compensated pursuant to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

_____A. percent of basic fees collected. Basic fee shall equal to the amount of fee required to be paid by City residents. Contractor shall not receive any portion of the fees paid by non-City residents in excess of the City resident fees.

_____B. \$___ per hour or \$_____ per person with a minimum of 5 people plus the rental of a hotel for one night for the instructor paid for by the city.

X C. Other: Waves Aquatics is paid fees for coached swim workouts directly by participants

 N/A D. In the event the City has not appropriated sufficient funds for payment beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year; payment for additional work is conditional upon future City appropriations.

4. **Payment Schedule.** No payment schedule as PROVIDER is collecting payments directly from participants.

5. **Termination.** CITY may terminate this Agreement at any time, for any and no reason, by providing ten (10) days advance written notice to PROVIDER.

6. **Independent Contractor.** It is agreed that PROVIDER is an independent contractor, and all persons working for or under the direction of PROVIDER are PROVIDER's agents, servants and employees, and said persons shall not be deemed agents, servants or employees of CITY.

7. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorney fees shall be based upon comparable fees of private attorneys practicing in Napa County.

8. **Insurance.** In consideration of the level of the services provided herein, PROVIDER shall show proof of insurance to the subsections marked below with an "X." Subsections which do not apply shall be identified as not applicable, marked below with "N/A."

a. X **Commercial General Liability**

- PROVIDER shall obtain Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each project. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by contractor. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard ("f" definition of insured contract in ISO form CG 00 01, or equivalent).

b. Auto Liability Insurance: Provide shall obtain Auto Liability Insurance with minimum limits of \$1,000,000 combined single

limit per accident. Coverage must apply to all owned, hired and non-owned vehicles. The City shall qualify as an insured on this policy.

- c. Workers' Compensation Insurance: PROVIDER shall obtain statutory Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident, \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

d. Acceptability of Insurers: Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to CITY .

e. N/A Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to CITY 's approval. Original Certificates of Coverage with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

f. Other Insurance Provisions:

(1) CITY, its officers, officials and employees are to be covered as additional insured by Endorsement CG 20 10 11 85 or equivalent for Commercial General Liability coverage.

(2) For any claims related to this project, PROVIDER's insurance coverage shall be primary and any insurance or self-insurance maintained by CITY, its officers, officials, employees and volunteers shall not contribute to it.

(3) Provider shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Provider shall forthwith obtain and submit proof of substitute insurance. Should Provider fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Provider's sole cost and expense.

(4) In the event PROVIDER employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of PROVIDER to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) The worker's compensation insurer shall issue an endorsement waiving its right to subrogate against the CITY OF CALISTOGA (CITY).

(6) The General Liability Policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately

9. **Indemnification.** . PROVIDER shall hold harmless, defend and indemnify CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorney fees which actually or allegedly arise out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the PROVIDER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of CITY, its officers, officials, employees and volunteers.

10. **Reliance Upon Professional Skill.** It is mutually agreed by the parties that CITY is relying upon the professional skill of PROVIDER, and PROVIDER represents to CITY that its work shall conform to generally recognized professional standards in the industry. Acceptance of PROVIDER's work by CITY does not operate as a release of PROVIDER's said representation.

11. **Amendment.** This Agreement may be amended by written instrument signed by both parties.

12. **Inconsistent Terms.** If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

13. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

14. **Background Checks.** Provider will perform background checks which include fingerprinting on all personnel who are referred to the City.

14. **Notices.** Any notice required to be given to PROVIDER shall be deemed to be duly and properly given if mailed to PROVIDER, postage prepaid, addressed to:

Name: KEVIN WONEY
Address: P.O. Box 303
Napa, CA 94559
Phone: 707-263-6221
Email: KEVIN@WAVE5AGVITIES.COM

or personally delivered to PROVIDER at such address or at such other addresses as PROVIDER may designate in writing to CITY .

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Mike Kirn
Acting City Manager
CITY of CALISTOGA
1232 Washington St.
Calistoga, California 94515
707-942-2806

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to PROVIDER.

IN WITNESS WHEREOF, this Agreement is executed by CITY and by PROVIDER.

APPROVED AS TO FORM AND CONTENT:

Michael Kirn
Acting City Manager, CITY of CALISTOGA

PROVIDER:

By: *[Signature]* *KEVIN C. TROTT*
Title: *Head Coach - Boys' Coaches Rep*
Taxpayer I.D. Number *94-1710736*



2019-0006858

Recorded
Official Records
County of
Napa
JOHN TUTEUR
Assessor-Recorder-Co.

REC FEE

0.00

RECORDING REQUESTED BY:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515

02:20PM 16-Apr-2019

LS
Page 1 of 2

AND WHEN RECORDED MAIL TO:

Stephen and Maria Isabel Hawks
1414 Cedar Street
Calistoga, CA 94515

COMPLIMENTARY RECORDING REQUESTED PURSUANT TO GOVERNMENT CODE SECTION 27383

APNs: 011-213-005

Property Address: 1413 Anna Street, Calistoga, CA

**SUBSTITUTION OF TRUSTEE AND
DEED OF FULL RECONVEYANCE**

The undersigned Beneficiary, in and under the provisions of that certain Deed of Trust executed by Stephen R. Hawks and Maria Isabel Martinez de Hawks, husband and wife as Joint Tenants, as to an undivided one-half interest and Edward L. Hawks and Stephanie C. Hawks, husband and wife as Joint Tenants as to an undivided one-half interest, Trustors, to Napa Land Title Company, as Trustee for the City of Calistoga, Beneficiary, dated October 4, 1989 and recorded on October 4, 1989 in the office of the Napa County Recorder of the County of Napa, State of California as Instrument No. 29999, Vol. 1688, Page 999 of Official Records does in accordance with the provisions of said Deed of Trust, hereby give notice of the Substitution and Appointment of City of Calistoga in place and instead of Napa Land Title Company, the Trustee above named, and does hereby vest in said substituted Trustee, all the rights, title, estate, power, duty and trusts conferred by said Deed of Trust above mentioned has been fully paid and/or satisfied.

NOW THEREFORE, City of Calistoga, substituted Trustee, does hereby GRANT AND RECONVEY unto the parties entitled thereto without warranty, all the estate and interest derived to the said Trustee under said Deed of Trust in the land therein described, situated in the City of Calistoga, County of Napa, State of California. Reference being hereby made specifically to said Deed of Trust and the record thereof for a particular description of said lands.

Dated: April 15, 2019

CITY OF CALISTOGA

BY: 
Michael Kirn, Acting City Manager

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Napa)

On April 11, 2019 before me, Irene Camacho Werby, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael Kirn
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Substitution of Trustee and Deed of Full Reconveyance Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____



2019-0009763

Recorded
Official Records
County of
Napa
JOHN TUTEUR
Assessor-Recorder-Co.

REC FEE

0.00

11:33AM 29-May-2019

JW
Page 1 of 2RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:City Clerk
City of Calistoga
1232 Washington Street
Calistoga, CA 94515Exempt recording fees pursuant to
Government Code §27383

(Space above for Recorder)

TERMINATION OF SUBDIVISION IMPROVEMENT AGREEMENT

The Subdivision Improvement Agreement for the Pestoni Subdivision located in the City of Calistoga, County of Napa, entered into by and between the CITY OF CALISTOGA and BOB L. PESTONI, dated September 7, 1993, recorded in the Office of the Recorder of the County of Napa on October 4, 1993, Serial Number 1993-032024 is hereby terminated.

This termination applies to the property described as follows: being a portion of the lands of Bob L. and Sylvia J. Pestoni of Record 1673 O.R. 693, N.C.R., and being Parcel 1, as shown on Parcel Map No. 4572, filed in Book 19 Parcel Maps, Page 50, Napa County Records.

Dated: 5/23/19, at Calistoga, California.

CITY OF CALISTOGA, a municipal corporation

By: 
Michael T. Kirn, AKA M. T. Kirn
Acting City Manager

ATTEST:


Irene Camacho-Werby
City Clerk

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Napa)

On May 23, 2019 before me, Irene Camacho Werby, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared M.T. Kirn
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____



2019-0009764

Recorded
Official Records
County of
Napa
JOHN TUTEUR
Assessor-Recorder-Co.

REC FEE

0.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:City Clerk
City of Calistoga
1232 Washington Street
Calistoga, CA 94515Exempt recording fees pursuant to
Government Code §27383

11:33AM 29-May-2019

JW
Page 1 of 2

(Space above for Recorder)

TERMINATION OF DEFERRED IMPROVEMENT AGREEMENT

The Deferred Improvement Agreement for the Pestoni Subdivision located in the City of Calistoga, County of Napa, entered into by and between the CITY OF CALISTOGA and ROBERT L. and SYLVIA J. PESTONI, dated November 5, 1991, recorded in the Office of the Recorder of the County of Napa on May 26, 1992, Serial Number 1992-017251 is hereby terminated.

This termination applies to the property described as follows: Parcel B as shown on Map Number 3825 recorded July 9, 1985 in Book 14 of Parcel Maps, at Page 51, in the office of the Napa County Recorder.

Dated: 5/23/19, at Calistoga, California.

CITY OF CALISTOGA, a municipal corporation

By: MT. Kirn
Michael T. Kirn, AKA M. T. Kirn
Acting City ManagerATTEST:
Irene Camacho-Werby
Irene Camacho-Werby
City Clerk

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Napa)

On May 23, 2019 before me, Irene Camacho Werby, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared M.T. Kirn
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

AGREEMENT FOR ANNUAL REPORTING CONSULTING SERVICES

This Agreement is made and entered into this 11th day of December 2018, by and between the City of Calistoga, hereinafter referred to as "**CITY**", and Urban Futures, Inc. Analytics & Compliance Solutions, an independent contractor, hereinafter referred to as "**CONSULTANT**".

RECITALS

WHEREAS, **CITY** requires on-going Annual Reporting Services (hereinafter referred to as "**Services**"); and,

WHEREAS, **CONSULTANT** represents that it has the qualifications and experience provide such Services; and,

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, **CITY** and **CONSULTANT** hereby agree as follows:

ARTICLE I **SCOPE OF SERVICES; TERM**

1.1 General Scope of Services.

CONSULTANT shall provide Annual Reporting Services related to **CITY**. Services shall be completed in accordance with the duties and responsibilities as set forth in the Scope of Work attached hereto as Exhibit "A", and incorporated herein by this reference.

1.2 Non-Exclusive Agreement.

CONSULTANT acknowledges that **CITY** may enter into agreements similar to this Agreement with other consultants.

1.3 Term.

The term of this Agreement shall begin on December 11, 2018, and continue until terminated by **CITY** or **CONSULTANT** pursuant to the provisions of this Agreement, for the duration of the bonds, defined to include refundings of the existing bonds. The terms of this agreement may also be applied to the **CITY'S** future bond issuances.

ARTICLE II
RESPONSIBILITIES OF CONSULTANT

2.1 Control and Payment of Subordinates.

CITY retains **CONSULTANT** to provide Services. Any staff provided by **CONSULTANT** will not be considered employees of **CITY**. **CONSULTANT** shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. **CONSULTANT** shall be responsible for all reports and obligations with respect to such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

2.2 Conformance to Applicable Requirements.

All Services or work product provided by **CONSULTANT** shall be subject to the approval of **CITY**.

2.3 Standard of Care; Licenses.

All Services to be provided by **CONSULTANT** pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices. **CONSULTANT** represents and warrants to **CITY** that it has all licenses, permits, qualifications and approvals that are legally required to practice its profession and to provide the Services hereunder. **CONSULTANT** further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

2.4 Project Representatives.

The **CITY** or its designee shall be the Project Representative of **CITY** for purposes of this Agreement and may issue all consents, approvals, directives and agreement on behalf of **CITY**, called for by this Agreement except as otherwise expressly provided in this Agreement. The engagement partner assigned by **CONSULTANT** shall act as Project Representative for **CONSULTANT** and shall provide management oversight of **CONSULTANT** employees at all times. **CONSULTANT** shall make best efforts to provide continuity of staff to **CITY** each year which this agreement is in effect. **CITY** retains the right to interview and approve **CONSULTANT** staff assigned to **CITY** prior to the start of work.

2.5 Accounting Records.

CONSULTANT shall maintain complete and accurate records with respect to costs and expenses incurred in the performance of this Agreement. All such records shall be clearly identifiable as being associated with this Agreement. **CONSULTANT** shall allow an authorized representative of **CITY**, during normal business hours, to examine, audit, and make transcripts of copies of such records. **CONSULTANT** shall allow **CITY** to inspect all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment (or completion of work) under this Agreement.

ARTICLE III COMPENSATION

3.1 Compensation.

Except as provided in this section, **CONSULTANT** shall receive compensation for all Services rendered under this Agreement at the rates set forth in the schedule of Compensation Rates and Charges attached hereto as Exhibit "B", and incorporated herein by reference. Total compensation shall not exceed the amounts specified in Exhibit "B" without written approval of **CITY'S** Project Representative. Assigned **CONSULTANT** staff shall not receive compensation for any services provided outside the Scope of Work unless such additional services (hereinafter "Additional Work") are approved in writing by **CITY** or its appointed representative prior to **CONSULTANT'S** staff performing the Additional Work.

3.2 Payment of Compensation.

CONSULTANT shall provide **CITY** an annual invoice that indicates the annual reports completed by bond issue by **CONSULTANT**, from the start of each billing period, as appropriate, through the date of the statement. **CITY** shall make any payment due within thirty (30) days after approval of the invoice by **CITY**.

3.3 Additional Work.

At any time during the term of this Agreement, **CITY** may request the **CONSULTANT** perform Additional Work. As used herein, "Additional Work" means any work that is determined by **CITY** to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. **CONSULTANT** shall not perform Additional Work until receiving prior written authorization from **CITY'S** Project Representative. It is specifically understood and agreed that oral requests and/or approvals of Additional Work shall be barred and are unenforceable.

3.4 Amendment of Scope of Work.

CITY shall have the right to amend the Scope of Work within the Agreement by written notification to **CONSULTANT**. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of **CONSULTANT** to secure **CITY'S** written authorization for Additional Work or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate **CITY** authorization.

3.5 Reimbursement for Expenses

CONSULTANT shall not be reimbursed for any expenses unless prior written authorization is obtained from **CITY**.

ARTICLE IV **INDEMNIFICATION AND INSURANCE**

4.1 Insurance Requirements.

CONSULTANT shall obtain, at its sole cost and expense and keep in force throughout the term of the Agreement, the following insurance coverage:

1. MINIMUM SCOPE INSURANCE: Coverage shall be at least as broad as:

- a. Commercial General Liability coverage (occurrence policy).
- b. Automobile Liability (any automobile).
- c. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- d. Errors and Omissions Liability Insurance appropriate to the consultant's profession. Architects' and Engineers' coverage shall be endorsed to include contractual liability (if applicable).

2. MINIMUM LIMITS OF INSURANCE: **CONSULTANT** shall maintain limits no less than:

- a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

c. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

e. Errors and Omissions Liability: \$1,000,000 per occurrence.

4.2. Deductibles and Self-insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by **CITY**. At the option of **CITY**, either: **CONSULTANT'S** insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to **CITY**, its officers, officials, employees, agents and volunteers; or **CONSULTANT** shall provide a financial guarantee satisfactory to **CITY** guaranteeing payment of losses and related investigations, claims administration and defense expense.

4.3 Other Insurance Provisions.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

a. **CITY**, its officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of **CONSULTANT**; and with respect to liability arising out of work or operations performed by or on behalf of **CONSULTANT** including materials, parts or equipment furnished in connections with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code § 27882(b). General liability coverage can be provided in the form of an endorsement to **CONSULTANT'S** insurance, or as a separate owner's policy.

b. For any claims related to this project, **CONSULTANT'S** insurance coverage shall be primary insurance as respects to **CITY**, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by **CITY**, its officers, officials, employees, agents or volunteers shall be excess to **CONSULTANT'S** insurance and shall not contribute with it.

c. Each insurance policy required by this clause shall be endorsed to state that **CITY** shall receive no less than thirty (30) days prior written notice of cancellation of any policies of insurance required hereunder.

4.4. Acceptability of Insurers

Insurance is to be placed with insurers with current A.M. Best's rating of no less than B+.

4.5. Verification of Coverage.

CONSULTANT shall furnish **CITY** with original certificates and amendatory endorsements effecting coverage required by **CITY**. All certificates and endorsements are to be received and approved by **CITY** before work commences. **CITY** reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

4.6. Subcontractors:

CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

4.7. Indemnification and Hold Harmless.

CONSULTANT shall defend, indemnify, hold free and harmless **CITY**, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless **CITY**, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CONSULTANT**, its employees and/or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement.

CITY shall defend, indemnify, hold free and harmless **CONSULTANT**, its officers, officials, employees, agents and volunteers from and against any and all damages to property or injuries to or death of any person or persons, and shall defend, indemnify, save and hold harmless **CONSULTANT**, its officers, officials, employees, agents and volunteers from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of **CITY**, its employees and/or authorized subcontractors, whether intentional or negligent, in the performance of this Agreement.

4.8. Additional Insurance.

Further, **CONSULTANT** shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any

of its officers', employees', or authorized subcontractors' own actions during the performance of this Agreement.

ARTICLE V **TERMINATION**

5.1 Notice of Termination.

CITY may terminate the whole or any part of this Agreement at any time and without cause by giving sixty (60) days written notice to **CONSULTANT** of such termination, and specifying the effective date thereof. **CONSULTANT** shall discontinue all Services affected by such termination within thirty (30) days of receipt of such notice, unless otherwise instructed by **CITY** in writing. **CONSULTANT** may terminate this agreement by giving the **CITY** sixty (60) days written notice.

5.2 Termination Without Cause.

If **CITY** terminates this Agreement without cause, **CONSULTANT** shall be paid for Services performed through the date of termination, upon receipt of written documentation of said Services by **CITY**. **CONSULTANT** shall be paid within sixty (60) days of **CITY'S** receipt of **CONSULTANT'S** invoice. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed Services.

5.2 Termination for Cause.

Should **CONSULTANT** default in the performance of any covenant, condition, or agreement contained in this Agreement and the default is not cured within thirty (30) days after written notice of the default is served on **CONSULTANT** by **CITY**, then **CITY**, in addition to any other remedies at law or equity, may terminate this Agreement. **CONSULTANT** shall be compensated for Services that have been completed and accepted by **CITY**. **CONSULTANT** shall be liable to **CITY** for any reasonable additional costs incurred to correct or cure unsatisfactory work performed by **CONSULTANT** that, at **CITY'S** discretion, must be revised, in part or in whole, to complete the Project.

5.4 Procurement of Similar Services.

In the event this Agreement is terminated as provided by this Article, with or without cause, in whole or in part, **CITY** may procure, any and all services as may be necessary to complete the Project.

5.5 Work Product.

Upon termination of this Agreement, **CITY** may require **CONSULTANT** to provide all finished or unfinished documents, data, studies, drawings, reports, etc., prepared by the **CONSULTANT'S** assigned staff in performance of this Agreement.

ARTICLE VI

GENERAL PROVISIONS

6.1 Notices.

All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail postage prepaid, return receipt requested to the following addresses indicated below:

IF TO CITY: City of Calistoga
1232 Washington Street
Calistoga, CA 94515

TO CONSULTANT: Urban Futures, Inc.
17821 East 17th Street, Suite 245
Tustin, CA 92780
Attn: Michael Busch

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark.

6.2 Entire Agreement.

This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreement whether verbal or written, concerning the same subject matter. This Agreement may be modified in writing and must be signed by both parties.

6.3 Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

6.4 Subcontracts.

CONSULTANT shall not subcontract any portion of the work required by this Agreement without prior written approval of **CITY**. All approved subcontracts, if any, shall

be accomplished by a written instrument. Such instrument shall contain an expressed assumption by the subcontractor of all conditions and terms and covenants contained in this Agreement.

6.5 Equal Opportunity Employment.

CONSULTANT represents that it is an equal opportunity employer and shall not discriminate either directly or indirectly against an employee or applicant for employment with **CONSULTANT** on the basis of race, color, religion, national origin, ancestry, sexual preference, sex or age. **CONSULTANT** shall also take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, national origin, ancestry, sexual preference, sex, age, or other prohibited grounds.

6.6 Attorney's Fees.

If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover reasonable attorney's fees and costs of suits.

6.7 Governing Law.

This Agreement shall be governed by and construed with the laws of the State of California. Any Action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Napa.

6.8 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

6.9 Right to Employ Other Consultants.

CITY reserves the right to employ other consultants in connection with this Project.

6.10 Covenant Against Contingent Fees.

CONSULTANT warrants that he/she/it has not employed or retained any company or person, other than a bona fide employee working with **CONSULTANT**, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, **CITY** shall have the right to annul this Agreement without liability or, in its discretion to deduct from **CONSULTANT'S** compensation provided under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

6.11 Conflict of Interest.

CONSULTANT covenants that he/she/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. **CONSULTANT** further covenants that in the performance of this Agreement, **CONSULTANT** shall not employ any person having any such conflict of interest.

6.12 Statement of Economic Interest.

If **CITY** determines **CONSULTANT** comes within the definition of **CONSULTANT** under the Political Reform Act (Government Code §87100 et. seq.), **CONSULTANT** shall complete and file and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with the **CITY** disclosing **CONSULTANT** and/or such other person's financial interests.

6.13 No Waiver of Breach; Time.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.14 Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

6.15 Taxes.

CONSULTANT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. **CONSULTANT** agrees to indemnify and hold **CITY** harmless from any liability which it may incur to the United States or to the State of California as a consequence of **CONSULTANT'S** failure to pay, when due, all such taxes and obligations.

6.16 Compliance With Law.

CONSULTANT shall comply with applicable federal, state and local laws, rules and regulations affecting the **CONSULTANT** and his/her/its work hereunder.

6.17 Title to Documents.

Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by **CONSULTANT** under the Agreement shall be vested in **CONSULTANT**, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of **CITY**. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to **CITY** without restriction or limitations on their use. **CONSULTANT** will retain copies of the above described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of **CITY** during the term of this Agreement or until ninety (90) days after receipt of final payment from **CITY**.

6.18 Validity.

The validity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

6.19 Headings.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

6.20 Counterparts.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

6.21 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.

CITY:

THE CITY OF CALISTOGA

By: Signature:



Name:

Dylan Feik

Title:

City Manager

CONSULTANT:

URBAN FUTURES, INC:

By:



Michael P. Busch

President & CEO

EXHIBIT "A"
SCOPE OF WORK

CONTINUING DISCLOSURE

The **CONSULTANT** will be expected to provide full annual continuing disclosure reporting for the **CITY'S** outstanding bond transactions as required by the Securities Exchange Commission's Rule 15c2-12 and in accordance with the specific disclosure reporting requirements detailed in each respective bond transcript. Specifically, **CONSULTANT** will:

1. Collect the necessary financial and statistical information from **CITY** staff, auditors, and any other source as required.
2. Transmit the annual report for each bond transaction listed below to the Municipal Securities Rulemaking Board's (MSRB) nationally recognized data repository known as EMMA.
3. Monitor each bond transaction listed below, on an on-going basis, for any occurrence of material events.

The **CONSULTANT** will provide Services as described in this agreement for the following bond transaction(s):

\$8,920,000

CITY OF CALISTOGA

2018 WATER AND WASTEWATER REVENUE

Services for future bond transactions will be added to this project with the mutual agreement of the **CITY** and the **CONSULTANT**.

ANNUAL DEBT TRANSPARENCY REPORTING

The **CONSULTANT** will be expected to provide annual debt transparency reporting to the California Debt and Investment Advisory Commission (CDIAC) for the **CITY'S** outstanding bond transactions as required by Government Code section 8855(k). Specifically, **CONSULTANT** will:

1. Collect the necessary information relating to Bond Proceeds for each bond transaction listed below from **CITY** staff or the assigned Trustee.
2. File the annual debt transparency report with CDIAC through their online reporting system.

The **CONSULTANT** will provide Services as described in this agreement for the following bond transaction(s):

\$8,920,000

CITY OF CALISTOGA

2018 WATER AND WASTEWATER REVENUE

Services for future bond transactions will be added to this project with the mutual agreement of the **CITY** and the **CONSULTANT**.

EXHIBIT "B"
COMPENSATION RATES AND CHARGES

CONTINUING DISCLOSURE

Preparation of Continuing Disclosure Annual Reports as stated below (*annual fee per issue to satisfy all requirements*):

City of Calistoga - Annual Reporting	Total Annual Fee
\$8,920,000	
CITY OF CALISTOGA	
2018 WATER AND WASTEWATER REVENUE	\$1,250
Total Annual Reporting Fee	\$1,250

A two percent inflation adjustment will be included annually and applied to the final invoice following each Continuing Disclosure Annual Report development cycle.

Services for future non-refunding Bond Issues will be added to this project for an additional \$1,250 per Bond, per year.

ANNUAL DEBT TRANSPARENCY REPORTING

Preparation of Annual Debt Transparency Reports as stated below (*annual fee per issue to satisfy all requirements*):

City of Calistoga - Annual Debt Transparency Reporting	Year One Fee	Annual Fee After Year One
\$8,920,000		
CITY OF CALISTOGA		
2018 WATER AND WASTEWATER REVENUE	\$600	\$175
Total Annual Debt Transparency Reporting Fee	\$600	\$175

Services for future non-refunding bond Issues will be added to this project for an additional \$600 per Bond, per year, for the first year, and \$175 per Bond, per year thereafter.